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**THE DEPARTMENT OF JUSTICE  
OF THE UNITED STATES**

## THE INSTITUTE FOR GOVERNMENT RESEARCH

Washington, D. C.

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**INSTITUTE FOR GOVERNMENT RESEARCH**  
**STUDIES IN ADMINISTRATION**

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**THE DEPARTMENT OF JUSTICE  
OF THE UNITED STATES**

**BY**  
**ALBERT LANGELOTTIG, PH. D.**

**THE JOHNS HOPKINS PRESS**  
**BALTIMORE MARYLAND**

**1927**

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**PRINTED IN THE UNITED STATES OF AMERICA**

***The Lord Baltimore Press***  
**BALTIMORE, MD., U. S. A.**

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## FOREWORD

Probably the most essential function of government is the maintenance of law and order. A government that does not protect its citizens in the orderly conduct of their affairs and ensure the enforcement of its commands as expressed in law, is not only derelict in respect to one of its primary duties, but also brings itself into contempt and thus lays the basis for failure in respect to all of its other undertakings. In the United States responsibility for the performance of this function is divided between the central government and the governments of the constituent states. At the outset the responsibility of the former of these governments was relatively light. Not only was the great body of private law state law, and thus to be enforced by state authorities, but the activities of the federal government were few and the volume of its public law small. In no respect has the political system of the United States undergone a more important change than in the assumption in recent years by the federal government of new responsibilities, involving the enactment of a great mass of legislation of far-reaching importance and correspondingly increasing the burden of law enforcement of that government. What was a relatively unimportant part of the work of that government, at least from the standpoint of organization and personnel for its performance, has now become one of its major activities. For a hundred years after its creation the federal government got along with a central law enforcement agency consisting of an Attorney General and a few assistants, numbering less than a hundred persons. To-day there is required a great department, organized in numerous bureaus and divisions, manned by over six hundred employees, exclusive of those performing work for the Department outside of the District of Columbia. In addition to this force, directly attached to the Department of Justice, there are in the other departments thousands of officers and employees having for their function the detection of infractions of the law and the taking of the preliminary steps for the arrest and prosecution of those guilty of such infractions. Such, for example, are the services for the enforcement of the prohibition and anti-narcotic laws and the prevention of counter-

feiting and other offenses located in the Department of the Treasury, the force of postal inspectors for the prevention of illegal use of the mails, not to speak of the many other forces having for their duty the enforcement of such laws as the pure food and drugs acts and those regulating phases of the commercial life of the nation.

This task of law enforcement presents one of the important problems of administration confronting the national government. The Department of Justice is the central agency for the performance of this task. The first requisite to a study of the manner in which this problem is being handled, with a view to determining whether conditions are satisfactory or not, is full information regarding the manner in which this department has come into existence and developed, its present duties, organization, and methods of procedure. The present study represents an attempt to provide such information. It was undertaken by the author at the suggestion of the present writer as his doctor's thesis while a student at The Johns Hopkins University, and was accepted as such by that institution. Later the author came to Washington and perfected his study under the general direction of the Institute for Government Research. The work as it stands is, however, wholly the author's product. Whether or not one agrees with all the positions taken by him, he has undoubtedly rendered a valuable service in giving not only an account of one of the important executive departments of the national government, but also a comprehensive insight into the problem of law enforcement as it confronts all the departments.

W. F. WILLOUGHBY.

## PREFACE

Jurisprudence recognizes the clear distinction between substantive and adjective law. The former has to do with the statement of legal rights and duties ; the latter with the means through which these rights and duties are determined and enforced. Adjective law is thus administrative law, using that term to designate the legal rules governing the manner in which a government is organized and conducted for the performance of its tasks. The judicial system of a country may be defective because its substantive law is unsatisfactory, because the adjective law is faulty, or because the adjective law is improperly administered. This adjective law concerning the administration of justice has to do with two distinct subjects : the organization and administration of the services within the executive or administrative branch of the government having for their function the prevention of infractions of the law and the detection and prosecution of those guilty of such infractions ; and the organization and procedure of the judicial tribunals, constituting the judicial branch of the government, having the function of adjudicating the matters so brought before them by the law enforcement officers of the executive branch or private individuals who believe that their rights have been violated.

The present study is one falling wholly in the first of these fields of adjective law. It seeks to trace the rise and development of the central agency that has been created by the national government for the performance of its task of enforcing the law for which the national government is responsible, and to describe the present organization, powers, and duties of that agency. Though the Department of Justice is the central, and much the most important, of the law enforcement agencies of the national government, it is by no means the only one. All of the departments have large responsibilities for the enforcement of laws governing matters coming under their jurisdiction. In a number of the other departments there are, moreover, important special services for the detection of the infraction of particular laws. In some cases the Department of Justice is exclusively responsible for both the detec-

tion of infractions of law and the bringing of those guilty of such infractions before the courts for prosecution. In others the responsibility of the Department of Justice begins only when its assistance is sought in bringing before the courts and handling matters that have originated in other departments. One of the most important aspects of the Department of Justice is its relations to other law enforcement agencies. This phase of the problem has been given especial attention. It is hoped, that this study will be of value, not merely in giving information concerning a particular service, but in aiding to a better comprehension of the large problem of law enforcement generally as it confronts the national government.

In the preparation of this work, the author has spent nearly four years. He has carefully scrutinized the law, read the reports, and interviewed those engaged in the actual performance of the duties of the organization which he describes. His purpose has been to present a clear and accurate picture of the functioning of the chief organization that enforces the law of the nation, brings infractors of this law to bar, sees that they pay the penalty of their crime, and that the courts of the land function properly to obtain this result as speedily as possible. Justice in this country is all too slow. It is hoped that this work will be of some use in pointing out the bad links in the chain that keeps the wheels moving and so help to speed up the overburdened judicial machine that has so much difficulty in promptly handling the work thrown upon it.

This study was prepared as a doctoral dissertation in the Department of Political Science at The Johns Hopkins University. To the head of that department, Dr. W. W. Willoughby, the author is indebted for both guidance and inspiration to an extent that only one who has had the privilege of studying under him will appreciate. The author has also been fortunate in having equal guidance and inspiration from Mr. W. F. Willoughby, Director of the Institute for Government Research, who suggested the subject, furnished material which would have been otherwise hard to obtain, constantly directed and criticized the work, and finally put at the author's disposal the library and staff of the Institute to prepare the study for publication.

The author wishes also to express his indebtedness to President Frank Johnson Goodnow, Professor John H. Latané, and Professor John M. Vincent of Johns Hopkins University and Professor

Felix Frankfurter, and Professor Edmund M. Morgan of the Harvard Law School. Professor Frankfurter read the chapters relating to the opinions of the Attorney General and criticized them most constructively. Professor Morgan read the entire manuscript and pointed out numerous places for improvement. Dr. Vincent guided the footsteps of the author from the beginning of his career as an undergraduate and led him to the portals of the Department of Political Science.

Thanks must also be given to all those officers of the national government who have so courteously assisted and supplied material and information, and to the members of the staff and the employees of the Institute for Government Research.

A. G. L.



# CONTENTS

CHAPTER	PAGE
FOREWORD . . . . .	vii
PREFACE . . . . .	ix

## PART I. HISTORY, ORGANIZATION, AND FUNCTIONS

I. HISTORY . . . . .	1
Establishment of Office of Attorney General . . . . .	2
Administration of William Wirt . . . . .	3
Solicitor of the Treasury . . . . .	4
Organization of the Office of the Attorney General . . . . .	6
Administration of Caleb Cushing . . . . .	7
The Attorney General Made Chief Law Officer . . . . .	8
Departmental Solicitors . . . . .	8
Establishment of Department of Justice . . . . .	9
Salaries for Court Officers . . . . .	13
National Penitentiary System . . . . .	14
Miscellaneous . . . . .	15
Bureau of Investigation . . . . .	15
Assistant Attorney General in Charge of Customs . . . . .	16
War Transaction Section . . . . .	17
Recent Developments . . . . .	17
II. THE OFFICE OF ATTORNEY GENERAL . . . . .	18
Legal Advisor . . . . .	18
Chief Law Officer . . . . .	19
Administrator of Judicial Affairs . . . . .	21
Chief of Federal Police . . . . .	24
Director of Prisons . . . . .	24
Miscellaneous . . . . .	24
Reports . . . . .	25
III. THE ADMINISTRATIVE DIVISION . . . . .	27
Office of Chief Clerk . . . . .	27
Office of Appointment Clerk . . . . .	29
Office of Disbursing Clerk . . . . .	30
Office of General Agent . . . . .	30
Library . . . . .	33
Miscellaneous . . . . .	34
IV. THE TECHNICAL DIVISIONS . . . . .	35
Solicitor General . . . . .	35
Anti-Trust Division . . . . .	36
Claims Division . . . . .	39
Customs Division . . . . .	41
Division of Prohibition and Taxation . . . . .	43
Admiralty Division . . . . .	44



CHAPTER	PAGE
Public Lands Division . . . . .	46
Criminal Division . . . . .	47
Office of Assistant to the Solicitor General . . . . .	50
Bureau of Investigation . . . . .	51
V. THE SOLICITORS . . . . .	57
Solicitor of the Treasury . . . . .	60
Solicitor for the Department of Commerce . . . . .	66
Solicitor for the Department of Labor . . . . .	66
Solicitor for the Department of State . . . . .	67
Solicitor for the Interior Department . . . . .	67
VI. THE UNITED STATES DISTRICT ATTORNEYS . . . . .	68
Duties . . . . .	75
Territorial District Attorneys . . . . .	81
VII. UNITED STATES MARSHALS . . . . .	82
Duties . . . . .	83
Deputies . . . . .	86
Accounts . . . . .	87
Marshals for Special Courts . . . . .	88
Territorial Marshals . . . . .	88
VIII. CLERKS OF THE FEDERAL COURTS . . . . .	90
Special Court Clerks . . . . .	95
IX. UNITED STATES PRISONERS . . . . .	97
Pardons . . . . .	97
Prisons . . . . .	97
Office of Superintendent of Prisons . . . . .	99
Leavenworth Penitentiary . . . . .	99
Atlanta Penitentiary . . . . .	101
McNeil Island Penitentiary . . . . .	103
Industrial Institution for Women . . . . .	104
Industrial Reformatory . . . . .	105
National Training School for Boys . . . . .	106
Commutations for Good Conduct . . . . .	107
Paroles . . . . .	108
Discharge Allowances . . . . .	109
Probation . . . . .	119
X. CONTROL OF LITIGATION TO WHICH THE UNITED STATES IS A PARTY . . . . .	111
Control by the President . . . . .	112
Control by the Attorney General . . . . .	113
Recognition by the courts . . . . .	113
Exercise of the control . . . . .	114
Compromises and Remissions . . . . .	115
Postal matters . . . . .	116
Customs cases . . . . .	116
Internal revenue cases . . . . .	117
Employees' compensation cases . . . . .	117
United States vessel cases . . . . .	117
Immigration cases . . . . .	118

# CONTENTS

xv

CHAPTER	PAGE
Navigation cases . . . . .	118
Fur cases in Alaska . . . . .	119
Discharge of poor debtors . . . . .	119
In general . . . . .	119
The Attorney General and compromises . . . . .	120
Enforcement Clauses of Statutes . . . . .	121
 XI. THE OFFICIAL OPINIONS OF THE ATTORNEY GENERAL . . . . .	 126
Opinions for the President . . . . .	126
Opinions for Heads of Departments . . . . .	127
Opinions Rendered Only on Questions of Law . . . . .	130
Questions of Law Submitted Must Relate to Actual Cases . . . . .	131
Questions Must Arise in the Administration of the Department Whose Head Requires Advice . . . . .	132
Questions Must Arise in the Department of the Officer Requiring Advice . . . . .	135
The Giving of Opinions . . . . .	136
Refusal to Answer Judicial Questions . . . . .	138
 XII. THE AUTHORITY OF THE OPINIONS OF THE ATTORNEY GENERAL . . . . .	 147
Intention of Congress . . . . .	147
Position of Attorneys General . . . . .	150
Position of Administrative Officers . . . . .	154
Position of the Courts . . . . .	155
 XIII. THE ATTORNEY GENERAL AND THE COMPTROLLER GENERAL . . . . .	 157
Rules Governing the Attorney General in Rendering Opinions in Accounting Matters . . . . .	159
Circumstances Giving Rise to Conflict between the Opinions of the Attorney General and the Comptroller General . . . . .	161
The Comptroller General on His Jurisdiction . . . . .	169
The Attorney General, the Comptroller General, and the Courts . . . . .	172

## PART II. PROBLEMS IN THE ADMINISTRATION OF FEDERAL LAW

XIV. A JUDICIAL ADMINISTRATIVE BUREAU . . . . .	176
 XV. THE DEPARTMENTAL ORGANIZATION . . . . .	 181
The Need for Uniform Designations . . . . .	181
A Bureau of Prisons Proposed . . . . .	182
Substitutions of Farms for Personal Services . . . . .	183
Customs Court Salaries . . . . .	183
 XVI. THE FIELD FORCE . . . . .	 185
 XVII. THE FUTURE OF THE SOLICITORS . . . . .	 190
 XVIII. PENAL PROBLEMS . . . . .	 192
Employment in the Prisons . . . . .	192
Factory Operations . . . . .	193
Printing . . . . .	194
Housing . . . . .	194
Drugs and Criminals . . . . .	195
Women Criminals . . . . .	196

CHAPTER	PAGE
Shall the Prisoners be Transferred to Another Department.	196
Probation . . . . .	198
Federal Jails . . . . .	198
<b>XIX. CONSOLIDATION OF THE DETECTION OF CRIME . . . . .</b>	<b>200</b>
Division of Post Office Inspectors . . . . .	200
Organization . . . . .	201
Activities . . . . .	204
Secret Service . . . . .	208
Organization . . . . .	208
Activities . . . . .	208
Prohibition Unit . . . . .	209
Organization . . . . .	211
Activities . . . . .	215
Other Detective Agencies . . . . .	216
Conclusion . . . . .	217
<b>APPENDIX</b>	
1. Outline of Organization . . . . .	221
2. Specimen Judicial District Organizations . . . . .	232
3. The Judicial Divisions of the United States . . . . .	235
4. Attorneys General and Solicitors General . . . . .	260
5. Bibliography . . . . .	262
Table of Citations . . . . .	277
Index . . . . .	307

# THE DEPARTMENT OF JUSTICE

## PART I

### HISTORY, ORGANIZATION, AND FUNCTIONS

#### CHAPTER I

#### HISTORY

The possession by the national government of the United States, in the Department of Justice, of a well organized, comprehensive, central law enforcement agency is in marked contrast with conditions existing in the individual states or in England from which it has drawn so large a part of its judicial institutions. The development of this department is thus a distinctly American product.

In the colonial period there was in England an attorney general and a solicitor general. Other public law officers have been added to this list, but England has never had and does not now have any department of law enforcement at all corresponding to the American Department of Justice.<sup>1</sup> Both during the colonial period and during all of the early years, there was no conception in the United States of the need for a department of law enforcement. Under the Articles of Confederation there was neither public attorney nor public prosecutor.

<sup>1</sup> The author knows of no adequate account of the system of law enforcement in England. The most concise explanation of existing conditions is to be found in Lowell, *Government of England*, vol. I, p. 132ff. For a more complete study of the English law officers, reference should be made to: Foss, *The judges of England*; Pollock and Maitland, *History of the English law*; Holdsworth, *History of English law*. Neither has any one attempted to trace the development of the public law officer in America either during the colonial period or subsequently. A study of the history of the public attorney and public prosecutor in the United States is one worthy of any historical scholar. Until such a study is made, to cover the colonial period at least, no one is justified in saying with certainty just why the national law officers started with such an ineffective organization and what forces delayed for so long a time the obvious expedient of a department for the effective control of national legal matters.

**Establishment of Office of Attorney General.** The Judiciary Act of 1789 provided for a district attorney in each federal district court to care for the interests of the United States in both civil and criminal matters and for an Attorney General, who was to prosecute and conduct before the Supreme Court all suits in which the United States was concerned. The Attorney General was also to advise the President and department heads on legal matters.<sup>3</sup> The Attorney General was given no supervision or control over the district attorneys. Except for the presidential control, the latter were, it seems, autonomous officers. Whether appeals to the Supreme Court from decisions of the district courts adverse to the United States were contemplated, is nowhere made clear. It is certain, however, that the method or lack of method provided was not calculated to make appeals on behalf of the United States either controllable or extremely effective.<sup>4</sup>

The insufficiency of the act of 1789 was apparent from the first, and Edmund Randolph, the first incumbent of the office, recommended that the Attorney General be given control over the district attorneys and power to appear on behalf of the United States in inferior courts as well as in the Supreme Court. This recommendation was transmitted to Congress by President Washington and favorably reported to the House of Representatives, but no action was taken on the matter.<sup>5</sup>

It seems that none of the serious problems in the administration of justice that so perplex the modern man were even remotely grasped by those who so clearly saw the requirement of, and provided for, a federal judiciary. Although from the first the Attorney General was considered a member of the President's cabinet<sup>6</sup> his salary was below that of the other members and he was not required to give his time exclusively to national affairs. He was permitted

<sup>3</sup> Act of September 24, 1789, c. 20, sec. 35, 1 Stat. L., 93.

<sup>4</sup> In this connection see act of May 26, 1824, c. 173, sec. 9, 4 Stat. L., 55. This is the first time, it appears, that Congress thought that it would be useful for the district attorneys and the Attorney General to have some communication.

<sup>5</sup> Easby-Smith, *The Department of Justice*, p. 6; *Annals of Congress*, vol. 2, pt. 1, pp. 53, 289, 329. The message of Washington transmitting Randolph's letter and the letter itself have not been found anywhere in print.

<sup>6</sup> This is the better view. See Learned, *President's cabinet*, p. 105ff, 164ff, 181ff. There is, however, some doubt expressed. Hinsdale, *History of the President's cabinet*, pp. 10, 11.

and, by the meagreness of his salary, required to engage in private practice, usually away from the seat of government. His salary was raised to a parity with the other cabinet salaries only in 1853.<sup>\*</sup> There is no provision of law to-day requiring the Attorney General's exclusive attention to national affairs;<sup>†</sup> but since the beginning of the term of Caleb Cushing (1853), it appears that no Attorney General has engaged in any very extensive private practice, if in any at all. He never appears in court for a private party and, in recent years, he has seldom appeared even as counsel for the United States. His duties as administrative head of the Department of Justice require his entire attention, and since the creation of the office of Solicitor General, the Attorney General has not always been appointed primarily for his legal ability.<sup>‡</sup>

**Administration of William Wirt.** Until the incumbency of William Wirt, the Attorneys General had no official residence at the seat of government, visited it only when business required, and advised the President at other times by mail.<sup>§</sup> Madison had the anomalous aspect of the situation brought home to him when, as Congress undertook the consideration of a bill suggested by him requiring the Attorney General to reside at the Capital, he received William Pinkney's resignation.<sup>||</sup> In his annual message of December 3, 1816, Madison called to the attention of Congress the serious needs of the Attorney General and recommended more adequate compensation and that there be provided for him "the usual appurtenances of a public office," but Congress did nothing.

Without in the least detracting from the glory of his predecessors, William Wirt may be called the first great Attorney General. He held the office from November 13, 1817, the first year of Monroe's administration, until the end of the administration of John Quincy Adams in 1829.

<sup>\*</sup> Act of March 3, 1853, c. 97, sec. 4, 10 Stat. L., 212.

<sup>†</sup> Act of March 3, 1917, c. 163, sec. 1, 39 Stat. L., 1106; *Crim. Cod.*, sec. 109.

<sup>‡</sup> Learned, p. 196ff. In *ex parte Grossman*, 267 U. S. 87, 45 S. Ct. 332, 69 L. ed. 527, 38 A. L. R. 131 (1925), Attorney General Stone appeared under unusual circumstances.

<sup>§</sup> Easby-Smith, p. 8.

<sup>||</sup> Wheaton, William Pinkney, pp. 108-25. Pinkney resigned the Attorney Generalship because he "did not find it convenient to reside at the seat of government."

Upon the fly-leaf of the earliest record book of the Department of Justice appears the following interesting entry in Wirt's own handwriting—as clear to-day as when it was written:

ATTORNEY GENERAL'S OFFICE

13 NOV. 1817.

Finding on my appointment, this day, no books, documents, or papers of any kind to inform me of what has been done by any one of my predecessors, since the establishment of the Federal Government, and feeling very strongly the inconvenience, both to the nation and myself, from this omission, I have determined to remedy it, so far as depends on myself, and to keep a regular record of every official opinion which I shall give while I hold office, for the use of my successors.

To make the arrangement as perfect as I can I have prevailed on the heads of Departments to furnish me with copies of all the documents on which I shall be consulted and which will be found filed and numbered, to correspond with the numbers in the margin prefixed to each opinion. A copious index to this book is also given, with reference, under various heads, to each case, for the greater facility of using the book.

WM. WIRT.

This book was faithfully kept in accordance with his plan, the earlier entries all being in his own handwriting.<sup>11</sup>

The only reason why the whole book is not in "Wirt's own handwriting" is that Congress after twenty-six years provided for a clerk for the Attorney General.<sup>12</sup> It was not until 1822 that the Attorney General was provided with official quarters.<sup>13</sup>

**Solicitor of the Treasury.** Congress early recognized that the district attorneys would have to be tied up to some extent with the central government. It provided in 1797 that in the cases of delinquent revenue officers and other public officers accountable for public funds, the Comptroller of the Treasury should institute proceedings to recover the moneys, presumably through the district attorneys.<sup>14</sup> This arrangement, however, was found to be

<sup>11</sup> Easby-Smith, pp. 9, 10.

<sup>12</sup> Act of April 20, 1818, c. 87, sec. 6, 3 Stat. L., 447. To support the statement of Easby-Smith, p. 10, and Learned, p. 169, that Congress also made provision for office and incidental expenses, I can find no authority and they give none. See, however, below Note 20.

<sup>13</sup> Easby-Smith, p. 10.

<sup>14</sup> Act of March 3, 1797, c. 20, secs. 1 and 3, 1 Stat. L., 512.

inadequate, and Congress in 1820 provided for an officer designated Agent of the Treasury to perform the necessary duties. These duties were to "direct and superintend all orders, suits, or proceedings, in law or equity, for the recovery of money, chattels, tenements or hereditaments in the name and for the use of the United States." This Agent was empowered to issue distress warrants to be executed by United States marshals, and the district attorneys were required to follow his instructions in regard to suits under his control. The district attorneys, marshals, and clerks of court were required to render periodical reports to the Agent.<sup>15</sup>

In 1830 the office of Solicitor of the Treasury was created.<sup>16</sup> To the Solicitor were transferred all the powers and duties of the Agent of the Treasury and enough additional powers were granted to make the administration of the legal affairs of the national government distinctly two-headed.<sup>17</sup> The Department of Justice Act<sup>18</sup> provided for the complete subordination of the Solicitor of the Treasury to the Attorney General; but the enactment of the Revised Statutes shortly thereafter provided the excuse for, or the necessity of, allowing the Solicitor of the Treasury to retain most of his former powers and duties and left matters, in law at least, even more complicated and uncertain than before.<sup>19</sup> This officer will receive consideration elsewhere in this study.

<sup>15</sup> Act of May 15, 1820, c. 107, sec. 1, 3 Stat. L., 592. Tradition in the Treasury Department has it that because Daniel Webster disliked the incumbent of the office of Attorney General, he influenced Congress to create the new office rather than enlarge the powers of the Attorney General. Petty politics and personalities may serve as well as anything else to explain the action of Congress, but the tradition overlooks the fact that between 1817 and 1823 Webster was engaged in transferring his citizenship from New Hampshire to Massachusetts and obtaining election to the House from his new constituency.

<sup>16</sup> Act of May 29, 1830, c. 153, 4 Stat. L., 414.

<sup>17</sup> There is a tradition that this change in title and dignity was made to provide a place in the government service for one whose placing was expected to smooth out the differences then existing between President Jackson and Vice-President Calhoun. *Congressional Globe*, 41 Cong. 2 sess., vol. 42, p. 3035. It should be said that Jackson was not satisfied and strongly recommended the unification of law enforcement under the Attorney General. Second Annual Message, Dec. 6, 1830. It was Webster's connection with the Solicitor of the Treasury Bill which probably gave rise to the confused tradition about the Agent of the Treasury. See Learned, p. 174ff.

<sup>18</sup> Act of June 22, 1870, c. 150, sec. 2, 16 Stat. L., 162.

<sup>19</sup> See 20 Op. 714. For a history and compilation of the law relating to the Office of Solicitor of the Treasury from 1830 to 1848, see 30 Cong. 2 sess., S. ex. doc. 36, Serial 532.



**Organization of the Office of the Attorney General.** In 1819 in addition to his salary (\$3500) and that of his newly appointed clerk (\$1000), Congress allowed the Attorney General \$500 for contingent expenses.<sup>21</sup> In 1820 the clerk's salary, it seems, was reduced to \$800 and the Attorney General was allowed no contingent expenses.<sup>22</sup> In 1821 the Attorney General was allowed another \$500 for contingent expenses and the service of a messenger.<sup>23</sup> For the next ten years, it is to be presumed, the Attorney General was expected to run his office on this \$500. It was not until 1831 that Congress finally realized that an efficient lawyer needs more than one \$800 clerk and quarters in which to conduct the affairs of a great government. It raised the salary of the Attorney General to \$4000, provided \$500 for contingencies, and gave him a messenger at \$500, \$733 for furniture for an office, and \$500 with which to buy books. The same act gave the Solicitor of the Treasury a salary of \$3500 and \$2000 for books and office expenses.<sup>24</sup>

After 1831 the Attorney General was regularly supplied with funds. It was not, however, until 1840 that an addition was made to his bookshelf. In that year \$1000 more was appropriated.<sup>25</sup> The \$1500 thus appropriated supplied the nucleus around which has been accumulated, by both purchase and conquest, the excellent library of the Department of Justice about which more will be said later.<sup>26</sup> In 1855 the appropriations for the Attorney General's Office were materially increased.<sup>27</sup>

Opinions of the Attorney General were first reduced to print in 1841. All the available opinions down to and including that of H. D. Gilpin of February 27, 1841, were transmitted to the House of Representatives by President Van Buren on March 3, 1841, in answer to a House Resolution of March 23, 1840, and printed by order of the House.<sup>28</sup> By resolution of July 24, 1850, the House again called for all the opinions of the Attorney General from

<sup>21</sup> Act of March 3, 1819, c. 54, sec. 1, 3 Stat. L., 500.

<sup>22</sup> Act of April 11, 1820, c. 40, sec. 1, 3 Stat. L., 560.

<sup>23</sup> Act of March 3, 1821, c. 34, sec. 1, 3 Stat. L., 632.

<sup>24</sup> Act of March 2, 1831, c. 55, 4 Stat. L., 455, 457.

<sup>25</sup> Act of May 8, 1840, c. 22, 5 Stat. L., 377.

<sup>26</sup> See below, p. 33.

<sup>27</sup> See acts: August 4, 1854, c. 242, sec. 1, 10 Stat. L., 558; March 3, 1855, c. 175, sec. 1, 10 Stat. L., 656.

<sup>28</sup> 26 Cong. 2 sess., H. ex. doc. 123, Serial 387.

1789 to date and had them published. This set includes all the opinions available at the time down to and including that of J. J. Crittenden of February 15, 1851.<sup>28</sup> In 1852 the opinions were printed privately in five volumes which included the opinions transmitted to Congress in 1851. Other volumes were added from time to time, Volume IX bearing the imprint, "Published by Authority of Congress." This set continued through sixteen volumes on a private basis but was recognized as the official set. Beginning with Volume XVII, the opinions have been published by the Government Printing Office.

**Administration of Caleb Cushing.** The greatest Attorney General after William Wirt was Caleb Cushing, who was a member of the brilliant cabinet of President Pierce and probably the most outstanding figure in it.<sup>29</sup> Cushing was the first incumbent of the Attorney Generalship after the salary of that office had been placed on an equality with that of the heads of the other executive departments. He gave his entire time to the duties of his office and roundly condemned any mixture of private and public business.<sup>30</sup> The most noteworthy events of his career as Attorney General were two reports rendered to the President and by him transmitted to Congress and printed. One report contained an exhaustive study of the judiciary of the United States, together with recommendations which greatly influenced the subsequent development of the judiciary system.<sup>31</sup> The other was an exhaustive treatment of the law officers of the government, with recommendations which greatly influenced Congress in the creation of the Department of Justice in 1870, and contained also a statement of the duties of the office of Attorney General which has served as a guide to all of Cushing's successors.<sup>32</sup>

In 1859 Congress authorized the Attorney General to appoint a person learned in the law as an assistant,<sup>33</sup> but this office was abolished in 1868 and in its place Congress provided for two Assistant Attorneys General, to be appointed by the President and

<sup>28</sup> 31 Cong. 2 sess. H. ex. doc. 55, Serials 602, 603.

<sup>29</sup> See Fuess, Caleb Cushing.

<sup>30</sup> 6 Op. 326, 355.

<sup>31</sup> 33 Cong. 1 sess., S. ex. doc., 41, Serial 698.

<sup>32</sup> 33 Cong. 1 sess., H. ex. doc., 95, Serial 724; 6 Op. 326.

<sup>33</sup> Act of March 3, 1859, c. 80, sec. 1, 11 Stat. L., 420.

confirmed by the Senate.<sup>34</sup> By the same act Congress increased the clerical force of the office and required the Attorney General and his assistants to represent the United States in the Court of Claims. In 1866 it authorized the Attorney General to appoint a law clerk.<sup>35</sup> These were the only increases in the technical staff of the central law office of the government until after the establishment of the Department of Justice.

**The Attorney General Made Chief Law Officer.** In 1861, seventy years after it was made, Congress carried out the recommendation of Randolph and gave the Attorney General supervision over the district attorneys and marshals. It required these officers to report to the Attorney General, and authorized two additional clerks to assist in the examination of these reports. It also authorized the Attorney General to employ counsel as he saw fit to assist the district attorneys in the discharge of their duties.<sup>36</sup>

This legislation indicated a comprehension of the requirements of an efficient administration of justice. It was followed, however, by an act providing that the Attorney General's supervision of the district attorneys and marshals should in no way interfere with the duties of the Solicitor of the Treasury.<sup>37</sup>

**Departmental Solicitors.** The creation of the Office of Solicitor of the Treasury served as a precedent for the establishment of other law officers of the government independent of the nominal chief law officer. A Solicitor was provided for the General Land Office by the act which reorganized that office in 1836.<sup>38</sup> The duties were mainly advisory, but the law was broad enough to serve as a basis for interference with the law affairs of the government when public lands were concerned. The office was abolished in 1844.<sup>39</sup>

The act establishing the Court of Claims provided for a Solicitor to represent the interests of the United States before that body.<sup>40</sup> This Solicitor was an autonomous law officer of the government. In 1868 Congress provided for appeals from the Court of Claims

<sup>34</sup> Act of June 25, 1868, c. 71, sec. 5, 15 Stat. L., 75.

<sup>35</sup> Act of June 23, 1866, c. 208, sec. 5, 14 Stat. L., 207.

<sup>36</sup> Act of August 2, 1861, c. 37, 12 Stat. L., 285.

<sup>37</sup> Act of August 6, 1861, c. 65, 12 Stat. L., 327.

<sup>38</sup> Act of July 4, 1836, c. 352, sec. 5, 5 Stat. L., 111.

<sup>39</sup> Act of June 12, 1844, c. 45, 5 Stat. L., 662.

<sup>40</sup> Act of February 24, 1855, c. 122, sec. 2, 10 Stat. L., 612.

to the Supreme Court, made it the duty of the Attorney General to represent the United States in claims cases, abolished the Office of Solicitor for the Court of Claims, and, as has been seen, provided for two Assistant Attorneys General.<sup>41</sup>

In 1863 Congress provided for a Solicitor of the War Department,<sup>42</sup> but abolished the office in 1866.<sup>43</sup> In 1865 the office of "Solicitor and Naval Judge Advocate General" was established;<sup>44</sup> but provision for its abolition was made in 1868.<sup>45</sup> The office ceased to exist on June 30, 1870,<sup>46</sup> but was immediately recreated as an office in the Department of Justice.<sup>47</sup>

The revenue act of 1866 reorganized the office of the Commissioner of Internal Revenue and provided for a Solicitor of Internal Revenue.<sup>48</sup>

Two other law officers of the government should be mentioned. In 1836 Congress created the Office of Auditor of the Treasury for the Post Office Department, who should "direct suits and legal proceedings" to enforce the payment of moneys due to the Post Office Department.<sup>49</sup> While it has never been specifically repealed, the Department of Justice Act transferred to the Attorney General all the duties of the Auditor under this provision of law.<sup>50</sup>

Another law officer created before 1870 was the Examiner of Claims in the State Department,<sup>51</sup> whose designation was afterwards changed to Solicitor for the Department of State.<sup>52</sup>

**Establishment of Department of Justice.** The events which led to the establishment of the Department of Justice may now be related. On December 12, 1867, the House of Representatives adopted a resolution instructing its Judiciary Committee to consider the propriety of reporting a bill to consolidate all the law

<sup>41</sup> Act of June 25, 1868, c. 71, sec. 5, 15 Stat. L., 75. See also act of July 25, 1868, c. 233, sec. 4, 15 Stat. L., 177.

<sup>42</sup> Act of February 20, 1863, c. 44, sec. 3, 12 Stat. L., 656.

<sup>43</sup> Act of July 28, 1866, c. 299, sec. 36, 14 Stat. L., 337.

<sup>44</sup> Act of March 2, 1865, c. 76, 13 Stat. L., 468.

<sup>45</sup> Act of July 20, 1868, c. 176, sec. 1, 15 Stat. L., 103.

<sup>46</sup> Acts: March 3, 1869, c. 123, 15 Stat. L., 313; April 10, 1869, c. 15, sec. 1, 16 Stat. L., 10.

<sup>47</sup> Act of June 22, 1870, c. 150, sec. 3, 16 Stat. L., 162.

<sup>48</sup> Act of July 13, 1866, c. 184, sec. 64, 14 Stat. L., 170.

<sup>49</sup> Act of July 2, 1836, c. 270, sec. 14, 5 Stat. L., 82.

<sup>50</sup> Act of June 22, 1870, c. 150, sec. 7, 16 Stat. L., 163.

<sup>51</sup> Act of July 25, 1866, c. 233, sec. 2, 14 Stat. L., 226.

<sup>52</sup> Act of March 3, 1891, c. 541, 26 Stat. L., 945.

officers of the government into one department. On February 19, 1868, a bill to establish a department of justice (H.R. 765) was offered by Lawrence of Ohio. This bill, however, died on the calendar, as did another (H.R. 610) of similar import offered by Jenckes of Rhode Island and referred to the Joint Committee on Retrenchment. In the Forty-first Congress both Lawrence and Jenckes re-introduced their bills, which were referred to the Joint Committee on Retrenchment, and the Jenckes bill,<sup>88</sup> with but slight amendment, became the Department of Justice Act.<sup>89</sup> The bill was reported from the Committee on Retrenchment by Jenckes on February 25, 1870,<sup>90</sup> and came up for discussion on April 26, 1870, when Jenckes gave a careful explanation of the bill section by section.<sup>91</sup>

The bill was again taken up and discussed on April 27, 1870. The intent of the bill was thus set forth by Jenckes :

. . . [In 1830] an act was passed to establish the office of solicitor of the Treasury . . . In many respects that statute was anomalous. It created a law officer in one Department of the Government for certain purposes, placing him to a certain extent under the authority of the Attorney General, but to a greater extent making him independent. . . .

. . . In 1861, there being a pressure upon the law department, the Attorney General was authorized to employ assistants to the district attorneys, and under this power eminent lawyers were employed in different parts of the United States to conduct special cases in each of the districts. At this time the law business of the Government greatly outgrew the capacity of the persons authorized to transact it, and the number of outside counsel . . . appointed subsequent to 1861 was greater than all the commissioned law officers of the Government in every part of the country. The attention of the Committee on Retrenchment, soon after its organization in the Thirty-Ninth Congress, was called to the great expense the Government was put to by the employment of these extra counsel. . . .

. . . The special reason why they have reported it earlier than any other relating to the organization of the Departments is the great expense the Government has been put to in the conduct of the numerous litigations involving titles to property worth millions of dollars, rights to personal liberty, and all the numerous litigations

<sup>88</sup> H.R. 1328, introduced February 24, 1870.

<sup>89</sup> *Globe*, 41 Cong. 2 sess., vol. 42, p. 3039, col. 1. (April 27, 1870).

<sup>90</sup> *Ibid.*, p. 1568, col. 3.

<sup>91</sup> *Ibid.*, p. 2994ff.

which can arise under the law of war. It has been impossible, with the force created by law, to attend to these matters properly in the various courts of the United States.

Here follows a recitation of the sums expended by the various departments and bureaus for the employment of special attorneys to conduct suits for the United States. He continued:

One of the objects of this bill is to establish a staff of law officers sufficiently numerous and of sufficient ability to transact this law business of the Government in all parts of the United States. We have now in the Attorney General's department the Attorney General himself and two assistants. We propose to create in that department a new officer, to be called the solicitor general of the United States, part of whose duty it shall be to try these cases in whatever courts they may arise. We propose to have a man of sufficient learning, ability, and experience that he can be sent to New Orleans or to New York, or into any court wherever the Government has an interest in litigation, and there present the case of the United States as it should be presented. . . .

. . . By this scheme we hope to have a law department equal to the present emergencies of the law business of the country."

. . . We have gone on creating law officers in the different Departments of this Government who are entirely independent of the head of the law department and of the Attorney General of the United States. . . .

. . . We find one interpretation of the laws of the United States in one Department and another interpretation in another Department. In fact, we had brought to our notice here early in the session an instance of different opinions upon the same subject, where the Paymaster General of the Army obtained one opinion from one law officer and another officer of the Government obtained from another law officer a different opinion upon the same subject, neither obtaining the opinion of the Attorney General, who ought to have been consulted. The consequence is a difference of opinion and a difference of advice in each case upon the same statute.

We found, too, that these law officers, being subject to the control of the heads of the Departments, in some instances give advice which seems to have been instigated by the heads of the Department. . . .

We have now this great anomaly: the Attorney General is bound to conduct all the cases of the United States in the Supreme Court of the United States; yet in the majority of instances he never hears of the cases until the printed record is in his hands, and there is no place in Washington to which he can go to ascertain

<sup>71</sup> *Ibid.*, p. 3035.

the history of the case. Under the law as it stands the Solicitor of the Treasury may advise the district attorneys in certain cases. The Attorney General has a general supervision over the district attorneys in all cases; but this general supervision and control has never been defined by law or usage in any opinion of the Attorney General. Hence the district attorneys have a divided responsibility. They have also a third responsibility—to send their accounts to the Interior Department to have them settled there. . . .

We have found instances in which not only direct supervision, but direct responsibility to the head of the Department is absolutely necessary for the protection of the Government. . . .<sup>82</sup>

. . . [If the heads of the other Departments wish] to engage counsel in any case he must send to the Attorney General [in the future]. If the Attorney General cannot try the case and the emergency requires assistant counsel, he can employ them. It is then done by the head of the law department, and not by the head of the Interior Department or the head of the Treasury Department. He is responsible as the chief law officer of the Government. If any error is committed we shall know who is chargeable with it."<sup>83</sup>

On April 28, 1870, the House again took up the bill for consideration. After the defeat of an amendment abolishing the office of the Judge-Advocate General of the Army the bill was passed without a record vote."<sup>84</sup>

The bill was reported to the Senate on the same day."<sup>85</sup> On the next day, April 29, it was placed on the calendar as favorably reported."<sup>86</sup> On May 4, the bill was reached on the Senate calendar, but, on objection to immediate considerations, was passed over."<sup>87</sup> It was taken up again in the Senate by unanimous consent, and after a brief discussion passed on June 16, 1870."<sup>88</sup> The bill received the Presidential approval on June 22, 1870,"<sup>89</sup> and the Department of Justice came into existence on July 1, 1870."<sup>90</sup>

The act was drawn with sufficient expertness and clarity to accomplish the designs of its authors, but it failed to repeal specifically existing sections of law which, but for the element of

<sup>82</sup> *Ibid.*, p. 3036.

<sup>83</sup> *Ibid.*, p. 3037, col. 1.

<sup>84</sup> *Ibid.*, pp. 3065-67.

<sup>85</sup> *Ibid.*, p. 3057.

<sup>86</sup> *Ibid.*, p. 3081.

<sup>87</sup> *Ibid.*, p. 3207.

<sup>88</sup> *Ibid.*, p. 4490.

<sup>89</sup> Act of June 22, 1870, c. 150, 16 Stat. L., 162.

<sup>90</sup> *Ibid.*, sec. 19, p. 165.

sequence, might have served to complicate the new machinery of the law department. The Revised Statutes, enacted in 1874, included this heterogeneous mass of obsolete provisions concerning the legal affairs of the government, and made them contemporaneous with the provisions of the Department of Justice Act.

The Revised Statutes<sup>67</sup> also modified the Department of Justice Act by omitting the provision that the Attorney General should include in his annual report statistics of crimes under the laws of the United States, "and, as far as practicable, under the laws of the several States."

The first report of the Attorney General contained a number of important recommendations. He complained that the design of the organic act was being defeated by the inadequacy of space assigned to his office, as a result of which the departmental law officers had to remain in their old offices and out of his control. The fact that the various Solicitors were being treated by the departments as before was mentioned and repeated in the succeeding reports. They still remain in their respective departments and have long since ceased to be in fact members of the Department of Justice, as is still prescribed by law. The Attorney General still has his office in a rented building, but arrangements are now being made for the erection of a building for the Department of Justice.<sup>68</sup>

**Salaries for Court Officers.** The Attorney General in his first report commented at great length on the fee system by which the marshals, district attorneys, and clerks were compensated, and recommended salaries for those officers. The recommendation was repeated in the reports for many years. In 1896 Congress finally provided that the fees of the district attorneys and marshals be paid into the Treasury and that they be given salaries to be fixed within certain limits by the Attorney General.<sup>69</sup> It was not until 1919 that the clerks were put on a salary basis.<sup>70</sup> Only the Clerk of

<sup>67</sup> Sec. 384. In his report for 1872, the Attorney General had recommended that an appropriation be made to collect directly the statistics of crime in the states. In 1873 he estimated the amount necessary at \$10,000 and reported that an attempt had been made to carry out the provision by letters to clerks of the county courts, but that answers had been received in only one in four cases.

<sup>68</sup> Under Act of May 25, 1926, c. 380, 44 Stat. L., 630.

<sup>69</sup> Acts: May 28, 1896, c. 252, sec. 6, 29 Stat. L., 179, March 4, 1923, c. 295, 42 Stat. L., 1560.

<sup>70</sup> Act of February 26, 1919, c. 49, 40 Stat. L., 1182.



the Supreme Court continues to receive his compensation in the form of fees.

For a number of years, beginning with 1870, the clerks came in for considerable condemnation because of delinquencies in supplying the district attorneys with the information needed for the Attorney General's report. In the report for 1873 the Attorney General mentioned by name a number of clerks who had failed to make the prescribed returns. It appears that the Attorney General received little aid from the judges in forcing the clerks to perform their duties in respect to reports.<sup>71</sup> In 1875 Congress provided for the removal of clerks by order of the President.<sup>72</sup>

In his report for 1872 the Attorney General called attention to the state of the law governing the appointment of commissioners by the circuit courts. He recommended their removal by the Attorney General. Since they were paid by fees, it was to their advantage to issue all sorts of process, and this tended to increase legal business. There was, also, no means of limiting the number appointed in each district. There has been no complaint about the commissioners in the reports since 1890. They are, however, still paid by fees, but since 1896, it appears that the number of commissioners has been limited to the number of divisions in each district.<sup>73</sup>

**National Penitentiary System.** The provision for and regulation of federal prisoners has been one of the Attorney General's recurrent problems. In his annual report for 1870 he recommended that provision be made for the erection of federal prisons and for the segregation of insane prisoners. Congress has finally acted on all these recommendations. In 1872 the Attorney General was given control over the incarceration of prisoners; this being transferred to him from the Secretary of the Interior.<sup>74</sup> The prison at Leavenworth was established in 1895.<sup>75</sup> The prison at Atlanta was authorized in 1899 and opened in 1902.<sup>76</sup> After the State of Washington had refused to accept the penitentiary at McNeil Island, it

<sup>71</sup> Annual Reports, 1871, 1872, 1873, and 1874.

<sup>72</sup> Act of February 22, 1875, c. 95, sec. 5, 18 Stat. L., 334.

<sup>73</sup> Act of May 28, 1896, c. 252, sec. 19, 29 Stat. L., 184 as amended by Act of March 2, 1901, c. 814, 31 Stat. L., 956.

<sup>74</sup> Act of March 5, 1872, c. 30, sec. 1, 17 Stat. L., 35.

<sup>75</sup> Acts: March 2, 1895, c. 189, sec. 1, 28 Stat. L., 957; June 10, 1896, c. 400, 29 Stat. L., 380.

<sup>76</sup> Act of March 3, 1899, c. 424, sec. 1, 30 Stat. L., 1113.

was made a federal institution in 1908.<sup>77</sup> In 1924 Congress authorized the erection of an Industrial Institution for Women. This is located at Alderson, West Virginia.<sup>78</sup> In 1925 an Industrial Reformatory for Men was authorized,<sup>79</sup> and the military reservation at Chillicothe, Ohio, has been transferred to the Department of Justice for this institution. The Attorney General has, finally, general supervision over the National Training School for Boys in Washington, D. C., which was established in 1866<sup>80</sup> and transferred to the Attorney General in 1872.<sup>81</sup> Until recently the National Training School for Girls came under the control of the Attorney General, but this institution has been transferred to the Board of Public Welfare of the District of Columbia.<sup>82</sup>

**Miscellaneous.** In his report for 1870 the Attorney General significantly said, "I know of no reason why criminal process issued in one district should not be executed in all parts of the United States." As this volume goes to press Congress has before it a bill to accomplish this result.<sup>83</sup>

In 1873 the Board of Metropolitan Police of the District of Columbia was transferred to the supervision of the Attorney General,<sup>84</sup> but in 1878 this duty was transferred to the Commissioners of the District of Columbia.<sup>85</sup>

**Bureau of Investigation.** What later became the Bureau of Investigation started as a force of examiners hired by the Attorney General from other departments to audit the accounts of the law officers. In his report for 1878 the Attorney General called to the attention of Congress the fact that he was provided with no force for the investigation of crime. In the appropriation act for 1879<sup>86</sup> the appropriation for detection and prosecution of crime allowed the Attorney General to expend part of the sum for

<sup>77</sup> Act of May 27, 1908, c. 200, 35 Stat. L., 374.

<sup>78</sup> Act of June 7, 1924, c. 287, 43 Stat. L., 473, Annual Report, 1925, p. 56.

<sup>79</sup> Act of January 7, 1925, c. 32, 43 Stat. L., 724.

<sup>80</sup> Act of July 25, 1866, c. 238, 14 Stat. L., 232.

<sup>81</sup> Act of March 5, 1872, c. 30, sec. 1, 17 Stat. L., 35.

<sup>82</sup> Acts: July 9, 1888, c. 595, 25 Stat. L., 245; February 25, 1901, c. 478, 31 Stat. L., 809; April 15, 1910, c. 164, 36 Stat. L., 300; June 26, 1912, c. 182, sec. 1, 37 Stat. L., 171; June 5, 1920, c. 234, sec. 1, 41 Stat. L., 865; February 26, 1923, c. 148, sec. 1, 42 Stat. L., 1358; March 16, 1926, c. 58, 44 Stat. L., 208.

<sup>83</sup> Annual Report, 1926, p. 2.

<sup>84</sup> Act of March 3, 1873, c. 227, 17 Stat. L., 517.

<sup>85</sup> Act of June 11, 1878, c. 180, sec. 6, 20 Stat. L., 107.

<sup>86</sup> Act of June 20, 1878, c. 359, sec. 1, 20 Stat. L., 234.

"investigation of official acts, records, and accounts." In 1882 the Attorney General suggested some method of local audit of accounts of district attorneys, marshals, and clerks. In 1884 he reported that with \$10,000 appropriated by the previous Congress he had worked out a uniform system of bookkeeping for the marshals. Only in 1896, however, did Congress pass a law requiring the marshals to conform to the regulations prescribed by the Attorney General.<sup>77</sup> The report for 1884 disclosed that the Attorney General was using examiners to examine the accounts of the court offices in the field. With the money appropriated for the detection and prosecution of crime, the Attorney General began, just when is not certain, to hire investigators from the other departments having detective forces. In 1908<sup>78</sup> the law forbade this practice, and the Attorney General was forced to organize his own bureau of investigation.

In 1906 the Attorney General reported that criminal identification records were accumulating at the federal penitentiaries. He recommended that Congress authorize the collection and classification of these records and their exchange with the states. In 1908 he announced that arrangements were being made for exchange of records with the states. In 1909 the records which had been transferred to Washington the year before were sent to Leavenworth. There the Bureau of Identification was set up. In 1923 this bureau was removed again to Washington and made part of the Bureau of Investigation.

In 1917 the United States entered the World War. Before that time the Department of Justice had been engaged in preventing violations of the neutrality acts. After the entry of the United States, the selective service and espionage acts took up much of the time of the Department. The legal staff was increased as well as the staff of the Bureau of Investigation.

**Assistant Attorney General in Charge of Customs.** In 1891 the Attorney General recommended the appointment of a special attorney to protect the interests of the United States in customs matters. Congress provided for such an officer in 1909, when it created a new Assistant Attorney General specifically charged with the protection of the United States in customs matters.<sup>79</sup>

<sup>77</sup> Act of May 28, 1896, c. 252, sec. 13, 29 Stat. L., 183.

<sup>78</sup> Act of May 27, 1908, c. 200, 35 Stat. L., 328.

<sup>79</sup> Act of August 5, 1909, c. 6, sec. 28 (30), 36 Stat. L., 108.

**War Transactions Section.** At the end of the war the Attorney General created in his department a War Transactions Section, at the head of which were two co-directors. It was the function of this organization to investigate the war contracts in the Departments of War and the Navy and prosecute persons who were found to have defrauded the United States in connection with war contracts. The section included not only lawyers of the highest type, but also a large staff of accountants, the chief of whom received a salary of \$18,000 a year. The section ceased to exist as a separate organization on June 30, 1926, and its unfinished business was transferred to the Claims Division.<sup>80</sup>

**Recent Developments.** In 1918 came the Eighteenth Amendment and the Volstead Act, which have added tremendously to the duties of the law officers of the government. Although there is a special force of detectives in the Treasury Department to enforce this act, the Bureau of Investigation has been frequently called upon.

In 1924 Congress created the Pueblo Lands Board to investigate the facts preliminary to the bringing of suits to quiet title to lands held by the Pueblo Indians, and provided that the Attorney General or an attorney appointed by him should serve as a member of this Board.<sup>81</sup> The salaries and expenses are provided for in the Department of Justice appropriation act, and the Department will bring the suits when the facts are ascertained.

Since 1870 the Department has increased in size and importance. With each increase in the powers and functions of the national government, new duties and personnel have been added. The Attorney General is no longer just the chief law officer. He seldom argues a case in behalf of the United States. The Solicitor-General, who was expected to travel from "New York to New Orleans," is able to argue only a small proportion of the cases that come before the Supreme Court in Washington. The law business of the national government has become so large that the Attorney General must now give his time to those administrative duties appropriate to the head of a large and important department of the national government.<sup>82</sup>

<sup>80</sup> House Hearings on Department of Justice appropriation bill, 1927, pp. 159-208.

<sup>81</sup> Act of June 7, 1924, c. 331, 43 Stat. L., 636.

<sup>82</sup> See Short, Development of National Administrative Organization in United States, Chap. XV. Institute For Government Research, Studies in Administration.

## CHAPTER II

### THE OFFICE OF ATTORNEY GENERAL

The Department of Justice Act gave to the Attorney General only such additional powers and duties as were calculated to make him the administrative head of the law officers of the national government and to give him effective control of its law business. Since its creation, the Department has been mentioned in the law but seldom. The internal organization has been left exclusively to the control of the Attorney General. No law prescribes what bureaus it shall contain or the specific duties of any of its officers. Whenever Congress wishes to increase the duties of the law officers, it puts them onto the shoulders of the Attorney General, who distributes the burden among his subordinates as he sees fit. Indeed, the Department of Justice might be defined as an organization created to assist the Attorney General in the performance of his duties. For the purpose of discussion, the functions of the Attorney General may be classified as follows:

1. Political adviser and assistant to the President
2. One of the many agencies that constitute the rather heterogeneous "system" of American administrative tribunals
3. Chief of the law officers of the government
4. Administrator for the federal courts
5. Chief of one of the national police forces
6. Director of the national penal institutions
7. Miscellaneous

**Legal Advisor.** Like all the other cabinet officers, the Attorney General is a political advisor of the President. He attends the cabinet meetings, and, it is to be presumed, advises as to the legal aspects of policies proposed. He is the fourth cabinet officer according to the Act of Succession.<sup>1</sup> Under the head of assistance to the President, the duties performed by the Department of Justice in connection with pardons may be included. There is an

<sup>1</sup> Act of January 19, 1886, c. 4, sec. 1, 24 Stat. L., 1.

attorney in the Department who gives his exclusive attention to pardon matters. His functions will be examined in more detail in a later chapter.

Another important function of the Attorney General is to render opinions for the guidance of the heads of the executive departments. As will be seen later, these relate to administrative matters exclusively. The opinions are often the only authoritative and, in any sense, judicial interpretation which large and important sections of national law receive.

**Chief Law Officer.** As the chief of the law officers of the government, the Attorney General supervises the conduct of all cases in which the United States has any concern. This includes cases in which either the United States appears by name or an officer of the United States or of Congress is impleaded.<sup>3</sup> The Attorney General, to make his authority effective, is given control over the departmental solicitors and over the district attorneys. The law clearly intends that the Attorney General shall be absolutely responsible and have full authority over the law officers of the national government. Broader powers than Congress intended to give to the Attorney General could not be desired by the most autocratic executive. Congress, however, has not adhered consistently to its original intention and the courts and human nature have not always respected the intentions of Congress. Indeed, so many exceptions to and interferences with the control of the Attorney General over government litigation had arisen by 1918 that it was necessary for President Wilson to issue an executive order again placing the Attorney General in absolute charge of all government cases.<sup>4</sup> As the general provisions stand, then, the Attorney General has substantial control over Solicitors, district attorneys, and all the law officers attached to the Department of Justice. He may direct any of them to perform any legal duties in which the United States is interested.<sup>4</sup>

The cases that the law officers try arise not only in the common law courts but also in the Court of Claims or in any special claims

<sup>3</sup> Act of March 3, 1875, c. 130, sec. 8, 18 Stat. L., 401.

<sup>4</sup> Executive Order of May 28, 1918.

<sup>4</sup> Secs. 359, 360, 362, 367, Rev. Stat.; act of June 30, 1906, c. 3935, 34 Stat. L., 816. The Attorney General is given absolute authority over appeals taken by the United States in court decisions adverse to the government. See act of May 17, 1898, c. 339, sec. 2, 30 Stat. L., 416.

courts that may be instituted. The Attorney General is charged with defending the United States in all claims brought against the government. He has assigned one of the Assistant Attorneys General to this duty exclusively and given him a large staff of assistants. Whenever Congress erects special claims commissions under international treaties, the Attorney General is called upon to protect the interests of the United States. Such was the case, for instance, when the Spanish Treaty Claims Commission<sup>7</sup> and the Court of Commissioners of Alabama Claims<sup>8</sup> existed.

The work of the law officers does not end with actual trials. The Attorney General and his subordinates represent the United States not only before the Court of Claims but also before any government department or bureau which is taking testimony or investigating any claim against the United States.<sup>9</sup> Committees of Congress considering claims also call in the Attorney General for help. If they want testimony taken anywhere in the United States they inform the Attorney General, who may have a district attorney present to represent the United States before the master in chancery taking the testimony.<sup>10</sup> The Attorney General, too, is required to certify the title to all land to be purchased by the United States. District attorneys are specially required to render services in this connection to assist the Attorney General in his investigations.<sup>11</sup> The Attorney General is given authority to expedite the trial of certain classes of cases. Upon a certificate of the Attorney General, delivered to the clerk of a district court, setting forth the importance of a particular case arising under the anti-trust laws, the court must proceed to a speedy adjudication of the case.<sup>12</sup> In cases coming before the Court of Customs Appeals, the Attorney General is given an unique power. The decisions of that court are made final "as to the construction of the laws and the facts respecting the classification of merchandise and the rate of duty imposed thereon," unless the Constitution of the United States is drawn

<sup>7</sup> Act of March 2, 1901, c. 800, 31 Stat. L., 877.

<sup>8</sup> Act of June 23, 1874, c. 459, sec. 5, 18 Stat. L., 246.

<sup>9</sup> Sec. 364, Rev. Stat.

<sup>10</sup> Act of February 3, 1879, c. 40, sec. 2, 20 Stat. L., 279.

<sup>11</sup> Sec. 355, Rev. Stat.; act of March 1, 1911, c. 186, sec. 8, 36 Stat. L., 962; act of March 2, 1889, c. 411, sec. 1, 25 Stat. L., 941.

<sup>12</sup> Act of February 11, 1903, c. 544, sec. 1, 32 Stat. L., 823, as amended by act of June 25, 1910, c. 428, 36 Stat. L., 854.

in question, or the provisions of a treaty are to be construed, or unless in any case, the Attorney General before the final adjudication by the Court of Customs Appeals gives a certificate that the case is of such importance that it should be reviewed by the Supreme Court.<sup>21</sup> It is provided, finally, that the officers of the Department of Justice, under the direction of the Attorney General, shall render all opinions and services for the government requiring the skill of persons learned in the law.<sup>22</sup>

It is as the chief of the law officers that the Attorney General exercises one of the most important powers of the government. The Attorney General, in ultimate control of all federal litigation, has power to decide which infractions of law shall be prosecuted and which shall not. By his control over the district attorneys, he may control the bringing of each suit. That this discretion has been exercised, has been admitted by at least one recent occupant of the Attorney Generalship. George W. Wickersham said

I am perfectly well aware that there is an uncertainty as to the precise scope and meaning of that law which most closely touches all business activities of the country, namely, the Sherman anti-trust law, and I should be the last to authorize the institution of a criminal proceeding against men who, without intent to violate the law, have, nevertheless, acted in technical contravention of an extreme and most drastic construction of that enactment.<sup>23</sup>

**Administrator of Judicial Affairs.** In performing certain administrative functions for the courts, the Attorney General must perform one of the most delicate and trying tasks given to any officer of the national government. The courts do not always seem willing to administer their own affairs in an efficient manner; and the separation of powers makes any efficient supervision by a member of the executive very difficult. To the Attorney General is delegated the delicate task of giving court business whatever administration it receives.

<sup>21</sup> Act of August 5, 1909, c. 6, sec. 28 (29), 36 Stat. L., 105; Jud. Cod., sec. 195, 36 Stat. L., 1145; act of August 22, 1914, c. 267, 38 Stat. L., 703. See also, chap. IV, note 16.

<sup>22</sup> Secs. 189 and 361, Rev. Stat.; *Perry v. United States*, 28 Ct. Cl. 483 (1893).

<sup>23</sup> *Case and Comment*, XVI, p. 2 (June 1909). See also Attorney General, Annual Report, 1924, p. 15.



The commissions for all judges and judicial officers are made out and recorded in the Department of Justice. They bear the departmental seal and they must be countersigned by the Attorney General.<sup>14</sup>

The clerks of court of the United States are considered as constituting part of the judicial branch. A detailed study of their connection with the Department of Justice will be made later. After some struggle with the courts, these officers have gradually been brought under the administrative control of the Attorney General, who fixes the amount of their bonds, authorizes assistants and expenses, prescribes the dockets to be used in accounting for moneys, pays their salaries, and sends examiners to supervise the conduct of their offices. This has not been accomplished without some difficulty, and the Attorney General can not yet take any very decisive measures against delinquent clerks without the help of the courts. So flagrant became the indisposition of judges to force the clerks to perform their duties, even as required by specific acts of Congress,<sup>15</sup> that power was finally given to the President to remove district court clerks, orders for such removals being countersigned by the Attorney General.<sup>16</sup>

The United States marshals have a double status. They are the executive officers of the courts, local disbursing officers of the Department of Justice, and federal peace officers. Their duties, therefore, are both judicial and executive. These are more fully discussed elsewhere. A general survey of their position as executive officers of the courts will suffice here. Congress has given the Attorney General effective control over all the activities of the marshals, and the courts have acquiesced, not, however, without some hesitancy.<sup>17</sup> The marshals are appointed by the President and confirmed by the Senate; their salaries are fixed by the Attorney General, and over all their duties, the Attorney General exercises general supervision.<sup>18</sup>

<sup>14</sup> Act of August 8, 1888, c. 786, 25 Stat. L., 387.

<sup>15</sup> See Annual Reports, 1871-74.

<sup>16</sup> Act of February 22, 1875, c. 95, sec. 5, 18 Stat. L., 334.

<sup>17</sup> *United States v. Hillyer*, 1 Alaska 47 (1892); *In re Anderson*, 94 Fed. 487 (1899); *Du Bois v. United States*, 25 Ct. Cl. 195 (1890); *People v. Ah Teung*, 92 Calif. 421 (1891); *Jobbins v. Montague*, 5 Ben (U. S.) 422, 13 Fed. Cas. No. 7, 329 (1871); *In re Henrich*, 5 Blatch (U. S.) 414 (1867), 11 Fed. Cas. 6369.

<sup>18</sup> Sec. 362, Rev. Stat.

Over the federal committing magistrates, the commissioners, the Attorney General has some control. They are appointed by the district courts for a term of four years and are paid by fees. Their records and offices are subject to investigation by agents of the Department of Justice. Their appointment must be communicated immediately to the Attorney General, and he prescribes the form of seal for their use.<sup>29</sup>

The judicial salaries are provided for in the annual Department of Justice appropriation act. They are paid by the marshals or disbursing officers of the Department of Justice. Rooms for the judges and for the courts are under the jurisdiction of the marshals.<sup>30</sup> Libraries for the courts are provided under the supervision of the Attorney General. The law provides that court expenses shall be authorized by the Attorney General.<sup>31</sup> The courts, however, show no disposition to abide by the law when it interferes with their convenience. From the appropriation for miscellaneous expenses of the United States courts, expenditures from which must be authorized by the Attorney General, printing and binding for the courts, stenographers and messenger for the judges, experts, and masters in chancery are paid. When a court decides on such an expenditure, the Attorney General can do nothing but authorize it, although he is supposed to use his discretion.<sup>32</sup>

In dealing with territorial courts Congress is not so bound by the doctrine of separation of powers, as it is when dealing with the federal courts. For Alaska, the Attorney General may prescribe special terms for the divisions of the court in his discretion and the places where such terms are to be held. He authorizes the employment of stenographers and their rates of salary.<sup>33</sup> He must approve rules for the guidance of and lists of fees for judicial officers in Alaska before promulgation by the judges of the courts.<sup>34</sup>

<sup>29</sup> Acts: May 28, 1896, c. 252, 29 Stat. L., 184, sec. 19, as amended by act of March 2, 1901, c. 814, 31 Stat. L., 956; June 28, 1906, c. 3573, 34 Stat. L., 546; April 29, 1926, c. 195, Title II, 44 Stat. L. 341.

<sup>30</sup> Jud. Cod., Sec. 127.

<sup>31</sup> Act of April 29, 1926, c. 195, Title II, 44 Stat. L., 341.

<sup>32</sup> House Hearings on Department of Justice appropriation bill, 1925, pp. 309-13.

<sup>33</sup> Act of June 6, 1900, c. 786, 31 Stat. L., 322, sec. 4, as amended by sec. 2 of act of March 3, 1909, c. 269, 35 Stat. L., 839.

<sup>34</sup> Act of March 3, 1899, c. 429, sec. 457, 30 Stat. L., 1335.

**Chief of Federal Police.** As the chief of federal police the Attorney General is charged with the superintendence of the work of detecting and arresting infractors of federal law. In the Department of Justice is a Bureau of Investigation, to which is assigned the *general* duty of detecting crime. Under the direction of the Attorney General also come the marshals, one of whose functions it is to maintain order within their districts, enforce the laws of the United States, and keep the Attorney General informed of threatened violations of the law.<sup>25</sup>

**Director of Prisons.** As director of national penal institutions, the Attorney General has charge of three penitentiaries, of the newly created United States reformatories, and of the National Training School for Boys. When state penitentiaries and jails are used by the national government, the Attorney General makes the contract with the state authorities. Over the treatment of all federal prisoners, the Attorney General exercises supervision. He reviews the decisions of the boards of parole, and makes rules and approves orders for commutation of sentence for good conduct. He may restore to prisoners such forfeited good conduct commutation as he may think proper. He designates the prisons to which prisoners are to be sentenced by the courts. He exercises general supervision over the conduct of federal probation officers. He supervises the industries carried on in the federal penitentiaries. The Attorney General exercises his authority over prisons and prisoners through the agency of the Superintendent of Prisons, whose duties will be discussed elsewhere.<sup>26</sup>

**Miscellaneous.** Besides the functions described above and the many reports that the Attorney General must make to Congress, that body has given him many miscellaneous duties to perform. He is required to compile and furnish to the clerks of court in Alaska copies of the road and trail laws of the United States,<sup>27</sup> and to have prepared copies of the law relating to the duties of officers in Alaska.<sup>28</sup> For Alaska, too, the Attorney General provides the seal.<sup>29</sup> Together with the Secretary of the Interior and the

<sup>25</sup> Instructions to Court Officials, 1925, nos. 204, 206 (b).

<sup>26</sup> Below, chap. IX.

<sup>27</sup> Act of April 27, 1904, c. 1629, 33 Stat. L., 393.

<sup>28</sup> Act of May 17, 1884, c. 53, sec. 11, 23 Stat. L., 27.

<sup>29</sup> Act of June 6, 1900, c. 786, sec. 3, 31 Stat. L., 322.

Commissioner of the General Land Office, the Attorney General constitutes a board charged with the duty of regulating the trial of suspended land entries.<sup>30</sup> Along with the other cabinet members, the Attorney General serves as a member of the corporation of the Smithsonian Institution.<sup>31</sup> The Attorney General and the Secretary of the Treasury constitute a board to decide when a tonnage duty contravenes a treaty provision.<sup>32</sup>

**Reports.** The Attorney General, finally, is required to make many reports to Congress. He must make a report of the business of the Department, the disbursements from the various appropriations made for the Department of Justice and for the courts, criminal statistics under the laws of the United States, the status of business in the courts, and the amount of business transacted by the courts.<sup>33</sup> He is required to give annually a list of all assistants to the district attorneys.<sup>34</sup> This requirement has not been complied with for a number of years. The Attorney General does, however, include in his Annual Report the names of special assistants to district attorneys. This falls far short of the requirement that he include the name and salary of each assistant district attorney, of each clerical assistant to a district attorney, of each office deputy and clerical assistant to marshals; the name, fees, and compensation of each field deputy marshal; and the amount of subsistence and traveling expenses of each district attorney, of each assistant district attorney, of each marshal, and of each office deputy marshal.<sup>35</sup> The Attorney General is required to lay before Congress each year the statistics relating to bankruptcy in the United States.<sup>36</sup> He must include in his report a statement of the financial condition of the cotton factory at the Atlanta penitentiary.<sup>37</sup> This

<sup>30</sup> Secs. 2450 and 2451 Rev. Stat., as amended by act of February 27, 1877, c. 69, sec. 1, 19 Stat. L., 244.

<sup>31</sup> Sec. 5579, Rev. Stat., as amended by acts of February 27, 1877, c. 69, sec. 1, 19 Stat. L., 253, and March 12, 1894, c. 36, 28 Stat. L., 41. For a consideration of the relations of the Attorney General to the Smithsonian Institution, see 6 Op. 24.

<sup>32</sup> Act of June 19, 1878, c. 318, 20 Stat. L., 171.

<sup>33</sup> Sec. 384, Rev. Stat.; act of June 20, 1874, c. 328, sec. 1, 18 Stat. L., 109; act of June 30, 1879, c. 52, sec. 3, 21 Stat. L., 44.

<sup>34</sup> Sec. 385, Rev. Stat.

<sup>35</sup> Act of May 28, 1896, c. 252, sec. 23, 29 Stat. L., 185.

<sup>36</sup> Act of July 1, 1898, c. 541, sec. 53, 30 Stat. L., 559.

<sup>37</sup> Act of July 10, 1918, c. 144, sec. 6, 40 Stat. L., 897.

report in past years has been included in the report of the warden of the penitentiary appended to the Annual Report of the Attorney General. In his report for 1926, however, the Attorney General did not include any reports of wardens of the penitentiaries or a report of finances of the cotton factory. The Attorney General is required to make a report of any cases arising under section 280 of the Judicial Code.<sup>38</sup> These are cases where debtors to the United States apply to have their indebtedness ascertained and settled.<sup>39</sup> The report of the Attorney General includes, finally, all cases under the act permitting suits against the United States in admiralty in which final decrees have been entered.<sup>40</sup>

The Attorney General does not attempt even to keep in touch with the multitudinous details of all the duties placed upon him. For this the Department of Justice exists. The Attorney General personally attends to cabinet matters. The Pardons Attorney comes immediately under the supervision of the Attorney General and receives, it appears, more attention from the Attorney General than do the other divisions of the Department. If the Attorney General has had, before his appointment some acquaintance with the administrative affairs of the government, he will write personally many of his opinions. If not, his subordinates must be called on for them. The law requires the Attorney General to render opinions personally only on questions of constitutional construction.<sup>41</sup> Besides the duties of general supervision, the Attorney General may take under his personal care any class of activities which, if assigned to one of the divisions, might overburden it.

<sup>38</sup> Act of March 3, 1911, c. 231, 36 Stat. L., 1087.

<sup>39</sup> Jud. Cod., Sec. 183.

<sup>40</sup> Acts: March 9, 1920, c. 95, sec. 12, 41 Stat. L., 528; March 3, 1925, c. 428, sec. 10, 43 Stat. L., 1113.

<sup>41</sup> Sec. 358, Rev. Stat.

## CHAPTER III

### THE ADMINISTRATIVE DIVISION

The Department of Justice has seven Assistant Attorneys General, one of whom is regularly assigned to the directorship of the Administrative Division. It is the duty of this officer to run the Department of Justice in Washington and the law affairs of the national government throughout the land as a business organization. The Administrative Division is divided into five major subdivisions:

1. Office of Chief Clerk
2. Office of Appointment Clerk
3. Office of Disbursing Clerk
4. Office of General Agent
5. Library

**Office of Chief Clerk.** The Chief Clerk divides the work of his office into the following sections:

1. Division of Mails and Files
2. Division of Supplies
3. Stenographic Bureau
4. Communications Section
5. Service Section

All mail directed to the Department comes in the first instance to the Division of Mails and Files. From here it is distributed to the proper places in the Department, and it is filed when it is returned to the division. The mail includes, among other things, the monthly reports of the district attorneys and marshals and the quarterly and annual reports of the clerks, all of which must be examined for errors. A copy of each report is filed. Other copies are sent to interested divisions of the Department of Justice and to any other department of the government interested in any particular report. This division keeps a complete docket of all United

States cases instituted in the federal courts, compiled from the monthly reports of the district attorneys.

The Division of Supplies procures and furnishes supplies not only for the Department of Justice but also for the court officers and the courts throughout the United States. Some of the equipment, such as files and furniture for marshals, attorneys, clerks and judges, is purchased and sent out from Washington.

The printing bill of the Department of Justice is large. Many forms are used in the Department at Washington, and by the marshals, district attorneys, and clerks throughout the country. Because federal practice is by law required to conform as nearly as practicable to state practice and since each circuit court of appeals and district court is to some extent independent of other circuit or district courts, forms vary from jurisdiction to jurisdiction. The Department has for years been working toward standardization of forms, but this has not yet been fully accomplished.<sup>1</sup> Besides the sheet forms, dockets must be supplied for marshals, district attorneys, and clerks, and calendars must be printed for use in public offices.

All supplies for the courts, the court officers, and the departmental field establishment are sent out from Washington from the Division of Supplies. The cost of transportation sometimes makes the cost of an article at its place of use double the local retail price. At the present time, five persons are employed in packing and shipping supplies from the Department. The Joint Committee on Printing has authorized the printing in the field of such legal papers as, in the opinion of the court, it is impracticable to have done at the Government Printing Office.<sup>2</sup>

The Supply Division coöperates with the General Supply Committee in the effort to standardize government supplies.<sup>3</sup>

The Department of Justice has found it possible to pool a large group of its stenographers and typists under the immediate charge of a chief and the general supervision of the Chief Clerk. The Stenographic Bureau performs much of the stenographic work of the Department. Each division has a group of stenographers,

<sup>1</sup> Annual Report, 1925, p. 86.

<sup>2</sup> Instructions to Court Officials, 1925, no. 68.

<sup>3</sup> Annual Report, 1925, p. 86. See act of June 17, 1910, c. 297, sec. 4, 36 Stat. L., 531, creating the Committee and defining its duties.

but their number is held to a minimum by pooling them in a large group from which can be drawn help when the work in a particular office or division is temporarily increased. In the Stenographic Bureau, also, most of the great mass of brief and opinion typing and most of the mimeographing of the Department is done.

The general supervision of the private branch telephone exchange in the Department comes under the office of the Chief Clerk. The exchange and its operators form the Communications Section.

All the subclerical employees of the Department are under the supervision of the Chief Clerk. They are usually classified for convenience as belonging to the Service Section. These employees include, mechanics, guards, laborers, and messengers.

The office of the Chief Clerk includes, besides its head, an assistant chief clerk, two stenographers, and a nurse.

**Office of Appointment Clerk.** The Assistant Attorney General in Charge of Administration is the personnel officer of the Department of Justice. He makes the decisions relating to appointments, transfers, and promotions in the clerical staff. The Appointment Clerk, however, is in immediate charge of the clerical and routine duties in connection with personnel. In his office are kept the files containing the applications for positions and recommendations for appointment and promotion in the Department of Justice. He sends to the Civil Service Commission requests for eligible lists, and transmits to that Commission the efficiency ratings of employees of the Department.

In addition to his duties in connection with departmental personnel, the Appointment Clerk prepares for submission to the Senate nominations for the appointment of the officers of the Department of Justice and of the federal judges. He prepares for the signature of the Attorney General and the President the commissions of all persons connected with the Department and the federal courts.

The Appointment Clerk prepares the "Register of the Department of Justice and of the United States Courts," the "List of United States Judges, District Attorneys, and Marshals," and information relating to the Department of Justice and the courts for the "Congressional Directory" and the "Official Register of the United States." The Appointment Clerk, finally, compiles the



various lists of employees of the Department of Justice appended to the Annual Report of the Attorney General.

**Office of Disbursing Clerk.** The Disbursing Clerk signs all Treasury certificates for payments from the funds which are under the control of the Attorney General and which are disbursed in the District of Columbia. All vouchers, claims, payrolls, and accounts for the Department of Justice in Washington, after being audited by the Division of Accounts, are paid by the Disbursing Clerk. He pays, also, the salaries and expenses of the Justices of the Supreme Court and of the courts in the District of Columbia and the salaries of retired judges. The Disbursing Clerk certifies, under the Retirement Act, to the Bureau of Pensions all applications for refund of deductions from salaries.<sup>4</sup> The disbursements outside of Washington are made by the marshals and the wardens of the federal prisons. Since the Disbursing Clerk is a bonded officer, he is more or less autonomous. He is, however, an officer of the Department and comes under the supervision of the Assistant Attorney General in Charge of Administration.<sup>5</sup>

**Office of General Agent.** The Office of the General Agent is divided into two parts :

1. Division of Accounts
2. Division of Examiners

The Division of Accounts performs four functions :

1. The administrative examination and audit of all claims, accounts, and vouchers covering disbursements on account of the Department of Justice, the federal courts, and the penitentiaries.

Before transmission to the Comptroller General, all accounts of the government undergo an administrative examination in the department under which the appropriation for their payment is made. The administrative examination of the accounts of the Department of Justice, of its field force, of the court officers, of the federal penitentiaries, of the federal reformatories, of the National Training School for Boys, and of the federal courts is made in the Division of Accounts. The accounts covering every appropriation head under the Department of Justice are kept in this division,

<sup>4</sup> Act of May 22, 1920, c. 195, 41 Stat. L., 614.

<sup>5</sup> Sec. 371, Rev. Stat.; act of July 31, 1894, c. 174, sec. 13, 28 Stat. L., 210.

and all claims for payments from any of the appropriation heads are passed upon here.

2. The preparation and review of authorizations for expenditures from funds under the control of the Attorney General.

Expenditures from the funds placed at his disposal must be authorized by the Attorney General. The actual authorization is made by the various administrative officers of the Department in accordance with allotments made by the Attorney General. The Division of Accounts keeps all the records regarding the fiscal matters of the Department of Justice and the courts; among other things the monthly payroll of the Department and the courts is made in this division.

In accordance with a recommendation of the Comptroller General, a Fiscal Control Section has been established in the Division of Accounts. This section is organized in conformity with a general scheme provided by the General Accounting Office for all departments. It keeps records of the encumbrances and liabilities against appropriations and keeps the administrative officers informed of the status of the funds from which they make requisitions. This involves examination of, and action upon, nearly nine thousand documents yearly.

3. The preparation of general and deficiency estimates of appropriation.

Since the creation of the national budget system in 1921, each department has been required to appoint a budget officer. The budget officer for the Department of Justice is the General Agent, under whose immediate direction are prepared the annual estimates to be sent to the Director of the Bureau of the Budget, and the various deficiency and supplemental estimates. Actual consultation with the Director of the Bureau of the Budget is carried on by the Assistant Attorney General in charge of administration. The Assistant Attorney General and the General Agent attend the hearings of the congressional committee considering the Department of Justice appropriations. They call before the committee the proper officer of the Department to explain the estimates requested and answer questions. When the proper officer is not available, the Assistant Attorney General or the General Agent substitutes. The General Agent provides the statistics requested by the committee.

4. In the office of the General Agent are compiled the statistical tables that appear in the Annual Report of the Attorney General. These tables cover the business transacted in the various federal courts during the fiscal year, statistics of bankruptcy, and the expenditures of the Department of Justice and the courts.

The Division of Examiners is made up of the field auditors of the Office of the Attorney General. In the annual appropriation act for the Department of Justice under the head of "Examination of judicial offices," the Attorney General is authorized to appoint agents to inquire into the conduct of the district attorneys, marshals, clerks, and commissioners, and when requested by a judge, the conduct of referees and trustees. As stated above, the Division of Accounts gives to the accounts from the various court officers an administrative examination when presented for payment. This examination is followed about a year later by a field examination by expert examiners sent out under the supervision of the General Agent by the authority of this provision in the annual appropriation act.<sup>9</sup> The work of the examiners is technical. They must be expert accountants, have a thorough knowledge of court procedure and of the decisions, respecting accounts, of the courts and of the Comptroller General, and understand the technicalities of the levying of court costs and the keeping of records.

One or two examiners from Washington will visit a judicial district and spend several months going over the books, records, and accounts of national fiscal matters connected with the courts in that district. It is understood that the examinations regularly include the accounts of trustees and referees. These examinations cover all events that have transpired since the last visit of the examiners.

The examiners interest themselves not only in the accuracy of accounts but also in the organization of the various offices that they investigate. A uniform organization and procedure for all offices under the Department of Justice is prescribed by the Attorney General. One of the duties of the mobile examination force is to keep these office organizations uniform throughout the United States. The examiners instruct the various officers how to organize

<sup>9</sup> House hearings on the Department of Justice appropriation bill, 1926, pp. 75-77.

their offices and how to fill out the various forms prescribed by the Attorney General. This is important when, with each change of administration, a corps of new and uninstructed officers is appointed. Differences in organization, resulting from necessarily different circumstances, are bound to arise. These differences cannot well be wholly obliterated. The general organization, however, must be kept uniform. It is said that, in general, the agents maintain a remarkable spirit of friendliness not only with the court officers under the Department but also with the judges and their appointees.

The examinations result in the correction of many improper practices and the apprehension of dishonest officeholders. They are particularly helpful in instructing new officers with respect to keeping records and accounting for funds, and the agents are continually assisting in the installation of improved methods. The examination of bankruptcy proceedings results in large amounts of money being paid into the courts and much unclaimed money in the court registries being covered into the Treasury. Special attention is given to the collection of judgments, fines, fees, and forfeitures due to the United States. The activities of the examiners result in large returns to the government.

**The Library.** The place of the Library in the organization is thus set forth in official terms:

The library is primarily for the use of officials of the Department of Justice, although its use is by courtesy extended to Federal judges and to officials of other governmental departments for special reference. It is strictly a reference library. Questions of various kinds involving researches come to it daily. Many times a query means original investigation of legal questions or investigation of debates in Congress and committee reports, to ascertain the legislative intent as to particular enactments, and these investigations frequently necessitate the preparation of memoranda.

[Books are purchased by the Librarian, who is usually an attorney, under the immediate supervision of the Assistant Attorney General in charge of Administration. A library committee, appointed by the Attorney General with the Solicitor General usually acting as its chairman, makes regulations for the uses of the library and determines the policy governing purchases.]<sup>1</sup>

The resources of the library consist of a highly specialized collection of law books and Government publications, about 55,000

<sup>1</sup> *Ibid.*, 1927, p. 52.

in number, and also a few thousand miscellaneous books for collateral reading, mainly history, biography, and political science. The sets are practically complete in Federal and State decisions, digests, and statutes. The collection is strong in British and British Colonial reports and statutes, and it is also strong in legal periodicals, fifty of which are current.

There are several thousand volumes of law treatises, well selected and practically up to date; also a valuable, though small, collection of volumes in foreign languages, consisting of treatises and laws of France, Germany, Italy, Spain, and Latin-American countries. The larger portion of this foreign collection was seized by the American Army when Gen. Scott entered the City of Mexico. These books were originally placed in the War Department and later transferred to the Attorney General's Office.

In addition to his regular duties as executive officer of the library, the librarian is charged with editing and preparing for publication the advance sheets of the opinions of the attorneys general. These opinions cover a comprehensive field of legal questions. Succinct statements of the law, as applied to the facts stated in the opinions, are prepared and prefixed as head notes to the opinions. A card index to these advance sheets is kept for current use, and at intervals cumulative subject-indexes covering opinions rendered since the last complete volume, are prepared and issued to officials of the Government.<sup>6</sup>

The current appropriations for books for the library is \$6700.\* Miscellaneous. Many officers coming under the supervision and control of the Attorney General, such as marshals, clerks, and commissioners, are required to execute bonds to the United States. These bonds must be examined at least every two years and renewed every four years.<sup>30</sup> The Attorney General is responsible for seeing to it that there are solvent sureties on the official bonds so that when the United States is forced to call upon them, it will get its money. He is given ample authority to require that sufficient sureties be signatory to the bonds. The actual performance of the duties relating to bonds filed in the Department of Justice is performed, together with any other miscellaneous matters that the Attorney General might assign to it, by the Assistant Attorney General in charge of administration or such of his subordinates as he may designate.

\* Attorney General, Annual Report, 1921, pp. 126, 127.

<sup>6</sup> Act of April 29, 1926, c. 195, title II, 44 Stat. L., 341.

<sup>30</sup> Acts: March 2, 1895, c. 177, sec. 5, 28 Stat. L., 807; July 1, 1918, c. 113, sec. 1, 40 Stat. L., 683.

## CHAPTER IV

### THE TECHNICAL DIVISIONS

The internal organization of the Department of Justice is nowhere prescribed by law, but has been developed as the needs arose and funds were provided. The distribution of work is by no means fixed. It changes as the burden of work changes. Changes are usually explained in the Annual Reports of the Attorney General and in the hearings on the appropriation bills.

Besides the Attorney General, the officers of the Department of Justice are the Solicitor General, the Assistant to the Attorney General, seven Assistant Attorneys General, an Assistant to the Solicitor General, and the Solicitors of the various departments. With the exception of the Assistant to the Solicitor General all of these are appointed by the President and confirmed by the Senate. The functions of the Assistant Attorneys General in charge of administration have already been described. The work of the departmental Solicitors will be discussed later. Each of the other officers mentioned is in charge of a division of the Department of Justice. In addition to the nine divisions the Department includes a Bureau of Investigation, under a director.

**Solicitor General.** The Solicitor General has charge of all Supreme Court matters. Under his supervision are prepared all the cases in the Supreme Court in which the United States is interested. Many of the cases are argued by the Solicitor General himself. The business of the United States before the Supreme Court has, however, long since far exceeded the capacity of one man. When a case comes up that falls under a branch of law assigned to one of the other technical divisions, the Assistant Attorney General in charge of that division or one of his subordinates will often argue the case. Or, one of the Solicitors may be called upon to send into the Supreme Court one of his staff particularly acquainted with the law under discussion. Even when the Solicitor General does not argue a case, he usually files a brief. At least his name is on one of the briefs filed for the government in each case. The

Solicitor General alone is responsible to the Attorney General that the United States is properly represented before the Supreme Court.

The reports from the district attorneys of the cases which are decided in the district courts or the circuit courts of appeals adverse to the United States or which are appealed in cases decided favorably to the United States are referred to the Solicitor General. Under his direction, investigation is made as to the advisability of taking an appeal, in the one case, and, in the other, how best to defend the United States. According to current practice, the Solicitor General decides finally whether in each case decided adversely to the United States, appeal is to be taken from the district to a circuit court of appeals or to the Supreme Court. Having decided on an appeal, the Solicitor General must decide on the means of representing the United States. He may order the district attorney who tried the case in the first instance to follow the case to the circuit court of appeals. More frequently, he will send out an attorney from Washington to represent the United States. This is particularly the case if any provision of law is being interpreted for the first time.

The Solicitor General has a staff of attorneys and law clerks, as well as a force of clerks and stenographers. By special provision of law, only the Solicitor General may exercise the functions of the Attorney General in case of the latter's death, disability, or resignation.<sup>1</sup>

**Anti-Trust Division.** The Assistant to the Attorney General presides over the Anti-Trust Division, which was created in 1903.<sup>2</sup> Although the Attorney General may assign to him any duties, he has always been put in charge of anti-trust matters. The expenses for this division are specially provided for in each appropriation act under the head of "Enforcement of anti-trust laws." To the Anti-Trust Division are assigned cases falling under the following heads:

1. Sherman Act<sup>3</sup>
2. Clayton Act<sup>4</sup>

<sup>1</sup> Secs. 179 and 347, Rcv. Stat.

<sup>2</sup> Act of March 3, 1903, c. 1006, 32 Stat. L., 1062.

<sup>3</sup> Act of July 2, 1890, c. 647, 26 Stat. L., 209.

<sup>4</sup> Act of October 15, 1914, c. 323, 38 Stat. L., 730, as amended by act of May 15, 1916, c. 120, 39 Stat. L., 121 and act of May 26, 1920, c. 206, 41 Stat. L., 626.

3. Federal Trade Commission Act <sup>6</sup>
4. Anti-trust provisions of the Wilson Tariff Act <sup>7</sup>
5. Webb Export Trade Act <sup>7</sup>
6. Capper-Volstead Act <sup>8</sup>
7. Stockyards Act <sup>9</sup>
8. Interstate Commerce Acts,<sup>10</sup> provisions relating to concessions and undue discriminations, falsifications of records, embezzlement of funds, etc.
9. Adamson Law <sup>11</sup>

Cases arising under the following war acts and not yet disposed of:

10. Railroad Control Act <sup>12</sup>
11. Telegraph and Telephone Control Act <sup>13</sup>
13. Food and Fuel Control Act <sup>14</sup>

The activities of the Anti-Trust Division can best be described in the words of Assistant to the Attorney General, Augustus T. Seymour:

While it is the purpose of the Department of Justice not to unnecessarily interfere with private business, the Federal antitrust laws must be enforced against whoever may attempt to interpose artificial restraints in any channel of interstate trade. The natural resources and prosperity of the country must be distributed among

<sup>6</sup> Act of September 26, 1914, c. 311, 38 Stat. L., 717.

<sup>7</sup> Act of August 27, 1894, c. 349, secs. 73-77, 28 Stat. L., 570, as amended by act of February 12, 1913, c. 40, 37 Stat. L., 667.

<sup>8</sup> Act of April 10, 1918, c. 50, 40 Stat. L., 516.

<sup>9</sup> Act of February 18, 1922, c. 57, 42 Stat. L., 388.

<sup>10</sup> Act of August 15, 1921, c. 64, 42 Stat. L., 159.

<sup>11</sup> Acts: February 4, 1887, c. 104, 24 Stat. L., 379; March 2, 1889, c. 382, 25 Stat. L., 855; February 10, 1891, c. 128, 26 Stat. L., 743; February 8, 1895, c. 61, 28 Stat. L., 643; February 19, 1903, c. 708, sec. 2, 32 Stat. L., 848; June 29, 1906, c. 3591, 34 Stat. L., 584; April 13, 1908, c. 143, 35 Stat. L., 60; June 18, 1910, c. 309, sec. 7, 36 Stat. L., 544; August 24, 1912, c. 390, sec. 11, 37 Stat. L., 566; March 1, 1913, c. 92, 37 Stat. L., 701; August 1, 1914, c. 223, sec. 1, 38 Stat. L., 627; March 4, 1915, c. 176, 38 Stat. L., 1196; August 9, 1916, c. 301, 39 Stat. L., 441; August 29, 1916, c. 417, 39 Stat. L., 604; February 17, 1917, c. 84, 39 Stat. L., 922; May 29, 1917, c. 23, 40 Stat. L., 101; August 9, 1917, c. 50, 40 Stat. L., 272; August 10, 1917, c. 51, 40 Stat. L., 272.

<sup>12</sup> Act of September 3 and 5, 1916, c. 436, 39 Stat. L., 721.

<sup>13</sup> Act of August 29, 1916, c. 418, 39 Stat. L., 645.

<sup>14</sup> Resolution of July 16, 1918, c. 154, 40 Stat. L., 904; act of October 29, 1918, c. 197, 40 Stat. L., 1017.

<sup>15</sup> Act of August 10, 1917, c. 52, 40 Stat. L., 273.



the people so that they may have full and free enjoyment thereof. The channels of trade must be kept free from manipulation and arbitrary control, and individuals and the general public must be protected from the illegal practices to which the business of the country is from time to time subjected.

The work of this division during the year has been directed mainly toward the solution of two major problems arising in the enforcement of the antitrust law. The first has to do with the selection and prosecution of cases involving the organization and activities of trade associations. Practically every industry has its trade association. Many of these are operating along lines which are entirely lawful and of considerable benefit to the members and to the public; some are groping in the twilight zone of illegality; a few are wholly illegal. Cases involving conscious illegality have been energetically prosecuted. The main purpose, however, has been to center attention upon a number of well-chosen cases which, when finally determined, will define with greater certainty the activities to which such associations may not resort, and on the other hand, aid honest business men to determine what measure of cooperation they may lawfully adopt.

The second problem involves the application of the antitrust law to restraints of trade and monopolies based upon the acquisition or pooling of competitive patents. The antitrust law and the patent law have different and to some extent conflicting purposes. Here, also, the effort has been to bring carefully selected cases which will aid in clarifying the law. The Department of Justice considers that its duty requires it to invoke the antitrust act in every situation, however novel, which appears to come fairly within the spirit or intendment of the act.<sup>15</sup>

Whenever the United States is complainant in an anti-trust case, the Attorney General may file with the clerk of the court in which the suit is pending a certificate that, in his opinion, the case is of general public importance. A copy of this certificate must be given to each judge of the court and the case must be given precedence and expedited in every way.<sup>16</sup>

Besides the staff of attorneys and clerks in Washington, the Anti-Trust Division maintains permanent offices at various places throughout the United States where the number of cases justify it. Attorneys from these field offices give their time exclusively to anti-trust matters and relieve the district attorneys in the courts when such cases arise. In 1926 the Anti-Trust Division employed,

<sup>15</sup> Attorney General, Annual Report, 1923, p. 231; 1924, p. 15.

<sup>16</sup> Act of February 11, 1903, c. 544, sec. 1, 32 Stat. L., 823, as amended by act of June 25, 1910, c. 428, 36 Stat. L., 854.

besides the Assistant to the Attorney General, seven attorneys in Washington and twenty-three attorneys located at various points in the United States, six of them in New York City.

**Claims Division.** The Attorney General is by law charged with the defense of the United States in the Court of Claims.<sup>27</sup> To perform this duty the Claims Division of the Department of Justice has been organized. The personnel of this division is provided for from the rolls of the Department, but there is a specific annual appropriation for the necessary expenses in connection with "Defending suits in claims against the United States." The division is charged with the defense of claims brought against the United States both in the Court of Claims and in the district courts. The litigation in the Court of Claims is conducted by the staff in Washington. In the district courts, the district attorneys have general charge of the cases, but attorneys from the Claims Division are sent out to assist the district attorneys, at least in the most important cases.

The Claims Division, according to the latest division of work in the Department, has charge of all patent and copyright litigation in which the United States is interested and of all claims against the United States except those which fall under the general jurisdiction of the Anti-Trust Division, the Admiralty Division, or the Division of Prohibition and Taxation. Cases that come under the jurisdiction of the Claims Division may be classified as follows:

1. General jurisdiction cases arising under the law establishing the general jurisdiction of the Court of Claims<sup>28</sup>
2. Departmental cases transmitted by the heads of departments for settlement under authority of law<sup>29</sup>
3. Congressional cases referred by one of the houses of Congress<sup>30</sup>
4. Indian depredation cases<sup>31</sup>
5. Suits arising out of the use by the United States or for its benefit of patented inventions, trademarks, and copyrights.

<sup>27</sup> Sec. 359, Rev. Stat.

<sup>28</sup> Jud. Cod., Sec. 145.

<sup>29</sup> Jud. Cod., Sec. 148.

<sup>30</sup> Jud. Cod., Sec. 151.

<sup>31</sup> Acts: March 3, 1891, c. 538, 26 Stat. L., 851; January 11, 1915, c. 7, 38 Stat. L., 791.

This head includes defending contractors against suits brought against them for the manufacture of articles sold to the United States

6. Suits arising out of the war legislation. Under this head the Claims Division is called upon to act as counsel for private concerns whose businesses were commandeered by the United States so that they were unable to fill private contracts. If illegal breach of contract were proven against them, the United States in its turn would become liable

In the Court of Claims, oral evidence is never heard. Cases are decided on written depositions. This practice, which is much cheaper than bringing witnesses to Washington, necessitates much travel for government counsel to attend to the taking of depositions both for and against the government. Sometimes considerable documentary evidence must be brought to the place of taking testimony. Where this evidence is too important to allow it to leave Washington, witnesses for the United States must be brought to Washington. Since cases in claims arrive at trial often five or more years after the incidents which gave rise to the claim occurred, witnesses are usually found widely scattered and in need of refreshing their memories by a view of the documents. The necessity for covering a wide range of territory is very important at the present time when cases are coming to trial affecting persons who, during the war, were concentrated in Washington, but, since the war, have returned to their homes in all parts of the country.

The force employed in the Claims Division consists of the Assistant Attorney General and nearly fifty attorneys of various grades. A special group of attorneys form the Patent Section, in the charge of a special assistant to the Attorney General. The patent attorneys are among the highest paid members of the legal profession, and an arrangement is usually made that their compensation shall not exceed \$1000 a month. The appropriation made especially for the defense of the United States in claims is expended largely for traveling expenses, expert witnesses, and stenographic service. The large amount expended for stenographic work results from written depositions. Claims cases, especially those involving patents, require the services of experts in many scientific fields. During the fiscal year 1924, 953 cases were disposed of in the Court of Claims alone, in which \$309,194,894.53 was claimed.

Of the litigants, 282 failed to receive a verdict, and the others received only \$4,672,761.25, or about 1½ per cent of the total amount claimed. In 1925 the record was not so good. In both the Court of Claims and the district courts, 527 cases were disposed of. The amount claimed was \$41,339,496.92, and the amount received was \$3,102,582.48. In 1926 the Claims Division disposed of 1473 cases, in which \$75,811,461.82 was claimed and \$7,032,629.65 was recovered.

**Customs Division.** The Customs Division is charged with protecting the customs revenue of the nation. So important is this duty that Congress has specially provided for the Assistant Attorney General in charge of the Customs Division,<sup>22</sup> who exercises his duties under the control of the Attorney General. His duties are to take "charge of the interests of the Government in all matters of reappraisement and classification of imported goods and of all litigation incident thereto, and . . . represent the Government in all the courts and before all tribunals wherein the interests of the Government require such representation." The tariff act of 1922<sup>23</sup> greatly added to the duties of this division. It provides that any manufacturer in the United States who considers the appraisement made by the government appraiser too low, may bring a suit to have the appraisement raised.<sup>24</sup> The Customs Division conducts or associates itself in the conduct of such cases. This has added many cases to the dockets of the hierarchy of customs courts.

Because the headquarters of the United States Customs Court is in New York and 75 per cent of the customs cases arise there, the office of the Assistant Attorney General in charge of customs matters is located in that city. The annual appropriation act for the Department of Justice includes a section appropriating especially for its maintenance. This office is called upon to conduct the cases in customs matters relating to classification and appraisement, beginning with cases coming before a single justice and ending, in some cases, only with a decision of the Supreme Court. The office is the

<sup>22</sup> Act of June 10, 1890, c. 407, sec. 30, 26 Stat. L., 142, as amended by act of August 5, 1909, c. 6, sec. 28 (30), 36 Stat. L., 108. See acts: September 21, 1922, c. 356, sec. 643, 42 Stat. L., 989; April 29, 1926, c. 195, title II, 44 Stat. L., 341.

<sup>23</sup> Acts: September 21, 1922, c. 356, 42 Stat. L., 858; May 28, 1926, c. 411, 44 Stat. L., 669.

<sup>24</sup> Act of September 21, 1922, c. 356, sec. 516, 42 Stat. L., 970.

only school for customs attorneys in the United States, and from its ranks attorneys regularly resign to become members of firms of customs attorneys.

Goods imported into the United States are in the first instance appraised at the port of entry by an officer appointed for the purpose. From his appraisal, on the motion either of a collector of customs, of a manufacturer in the United States, or of the importer, appeal may be taken to the Customs Court. The Customs Court consists of nine justices. The whole Court sits only to enact general rules of procedure and perform similar administrative functions. For the trial of reclassification cases, the Court is divided by the Chief Justice into three-member sections which have concurrent jurisdiction over all such cases. The decision of the Customs Court is the decision of one of these sections. A quorum of a section is the full quota of three members. In valuation cases, appeals are heard in the first instance by a single justice sitting as a trial judge. From his decision, appeal may be taken to the Customs Court, that is, to one of the three-member sections. From the decision of the Customs Court appeal may be taken on questions of law to the Court of Customs Appeals. When the questions raised involve the construction of the Constitution or the provisions of a treaty or when the Attorney General certifies that the case is of particular importance, appeal may be taken to the Supreme Court from decisions of the Court of Customs Appeals.<sup>25</sup>

The 25 per cent of the cases not arising in New York are heard at the other forty-one ports of entry throughout the United States. Dockets are kept at each of these ports, and at convenient times during the year the Customs Court goes on circuit. The Court of Customs Appeals also goes on circuit. The customs laws are so technical that the local United States attorneys are never trusted to handle cases arising under them. Wherever the Customs Court or the Court of Customs Appeals may sit, to that place at least one of the attorneys of the Customs Division must be sent out from New York. Since the time limit on appeals is short, as soon as a case is started the papers are sent immediately to New York, where the Customs Division makes its first examination and files

<sup>25</sup> Acts: June 10, 1890, c. 407, secs. 12-17, 26 Stat. L., 136; May 27, 1908, c. 205, sec. 3, 35 Stat. L., 406; August 5, 1909, c. 6, sec. 28 (12-17), 36 Stat. L., 98; September 21, 1922, c. 356, 42 Stat. L., 858; Jud. Cod., secs. 188, 189, 194, 195, as amended by act of August 22, 1914, c. 267, 38 Stat. L., 703.

the government brief in the case. This brief is then submitted to the appellant, and the case comes to trial either in New York or at the appropriate port of entry. Appeals from decisions in valuation cases by a single justice and in reclassification cases by the Customs Court, are taken on the record only; so that each case must be fully prepared at its first trial. Customs cases are very technical and require counsel of the highest type to protect the interests of the United States, but more particularly to enforce the protective provisions of the tariff act. On June 30, 1926, 179,349 customs cases were pending before the various courts of the United States.

**Division of Prohibition and Taxation.** The great weight of litigation in the federal courts to-day concerns the prohibition act and amendment. Add to these, cases concerning the various federal taxes, income, estate, excise, and taxes on admission and dues, and for numbers these cases far surpass all other classes of cases combined. All cases arising under the Eighteenth Amendment and the prohibition acts passed thereunder and all cases arising under the laws concerning all federal taxes except customs come under the supervision of the Division of Prohibition and Taxation, which is directed by an Assistant Attorney General.

All the cases over which this division has control arise in the Treasury Department. The Prohibition Unit has its own legal force. The Treasury Department has a Solicitor, and legal forces in most of its bureaus and divisions. These legal forces pay close attention to prohibition and taxation cases, but the general supervision over the whole field and the coördinating agent is the Division of Prohibition and Taxation in the Department of Justice. This division does not have more important or vital cases than does any other division. Indeed, its main function is to obtain speedy trials and effective enforcement of the laws under its supervision by means of proper administrative control rather than to supply superior legal knowledge for especially important cases. The Assistant Attorney General must keep close tab on the district attorneys when the Volstead Act is to be enforced. The encouragement to accept bribes is strong and the attorneys are often not in sympathy with the act.

In addition to her<sup>30</sup> duties in connection with prohibition and taxation, the Office of Superintendent of Prisons at the present time comes under the general supervision of the head of this division. The Superintendent of Prisons has immediate charge of all of the federal prisons and prisoners. The duties of this officer will be explained more fully elsewhere.

**Admiralty Division.** The Admiralty Division besides the Assistant Attorney General includes a small staff of attorneys. This division supervises the conduct of all suits in which the United States is interested arising under the following heads and acts:

1. Admiralty. These cases arise mainly under the act permitting suits in admiralty to be brought against the United States<sup>31</sup>
2. Shipping acts.<sup>32</sup> Under this head, the cases usually involve contracts between the Emergency Fleet Corporation and private construction companies and libels for damages against ships operated by the Corporation. Some of the libels have to be defended in foreign countries
3. Financial matters arising under:
  - a. National Banking Acts<sup>33</sup>
  - b. Federal Reserve Act<sup>34</sup>
  - c. Federal Farm Loan Act<sup>35</sup>
  - d. War Finance Corporation Act<sup>36</sup>
  - e. Capital Issues Committee Matters<sup>37</sup>
4. Insular and territorial affairs generally, excluding matters arising in the territories under federal law which fall under some other head of legal classification. This class includes questions of territorial bond issues, general questions affecting the administration of law in the territories, and recommendations to the President and Congress regarding their action in relation to statutes passed by territorial legislatures

<sup>30</sup> This office is now (1927) held by a woman.

<sup>31</sup> Acts: March 9, 1920, c. 95, 41 Stat. L., 525; March 3, 1925, c. 428, 43 Stat. L., 1112.

<sup>32</sup> Acts: June 26, 1884, c. 121, 23 Stat. L., 53; June 19, 1886, c. 421, 24 Stat. L., 79; March 3, 1897, c. 389, 29 Stat. L., 687; September 7, 1916, c. 451, 39 Stat. L., 728; June 7, 1872, c. 322, 17 Stat. L., 262; June 9, 1874, c. 260, 18 Stat. L., 64.

<sup>33</sup> Acts: June 3, 1864, c. 106, 13 Stat. L., 99; July 12, 1882, c. 290, 22 Stat. L., 162.

<sup>34</sup> Act of December 23, 1913, c. 6, 38 Stat. L., 251.

<sup>35</sup> Act of July 17, 1916, c. 245, 39 Stat. L., 360.

<sup>36</sup> Act of April 5, 1918, c. 45, Title I, 40 Stat. L., 506.

<sup>37</sup> *Ibid.*, Title II, p. 512.

5. Foreign relations and State Department matters exclusive of crime. The main considerations arising under this head are violations of the neutrality laws <sup>34</sup>
6. Navigable waters. Cases under this head arise in connection with the War Department's regulation of navigable waters <sup>35</sup>
7. Customs matters, except importation of liquors and questions of reclassification and appraisement; the former coming under the Division of Prohibition and Taxation and the latter under the Customs Division. The questions arising under this head usually concern such matters as fraudulent importations and the general administration of the Customs Service by the Secretary of the Treasury.
8. Bankruptcy matters, except crimes. This division represents the United States in the settlement of bankrupt estates
9. Civil Service matters except crimes. These include cases arising under the federal employees' compensation acts <sup>36</sup> and pensions
10. War Risk Insurance Act <sup>37</sup>
11. Alien property matters arising under the Trading with the Enemy Act. <sup>38</sup> These matters are controlled by a special section presided over by a Special Assistant to the Attorney General. This section works in close alliance with the Office of the Alien Property Custodian. Two classes of cases arise under this head. Some must be litigated; a number are settled by the decision of the President. The latter are reported on by the Admiralty Division and sent to the President with the Attorney General's recommendation.
12. Minor regulations of commerce:
  - a. Hours of Service Acts. <sup>39</sup> These cases arise mainly under the railroad act, and are brought at the instance of the Interstate Commerce Commission
  - b. Twenty-eight hour act, <sup>40</sup> prohibiting the confinement of animals while in transportation without food or water for more than twenty-eight hours

<sup>34</sup> Crim. Cod., secs. 9 to 18; Acts: May 7, 1917, c. 11, 40 Stat. L., 39; June 15, 1917, c. 30, Title V, 40 Stat. L., 221.

<sup>35</sup> Act of August 18, 1894, c. 299, sec. 4, 28 Stat. L., 362, as amended by act of June 13, 1902, c. 1079, sec. 11, 32 Stat. L., 374, and act of August 8, 1917, c. 49, sec. 7, 40 Stat. L., 266.

<sup>36</sup> Acts: September 7, 1916, c. 458, 39 Stat. L., 742; June 13, 1922, c. 219, 42 Stat. L., 650; July 11, 1919, c. 7, sec. 11, 41 Stat. L., 104; December 24, 1919, c. 17, 41 Stat. L., 377.

<sup>37</sup> Act of September 2, 1914, c. 293, 38 Stat. L., 711.

<sup>38</sup> Act of October 6, 1917, c. 106, 40 Stat. L., 411.

<sup>39</sup> Acts: August 1, 1892, c. 352, 27 Stat. L., 340; June 19, 1912, c. 174, 37 Stat. L., 137; March 3, 1913, c. 106, 37 Stat. L., 726; March 4, 1907, c. 2939, 34 Stat. L., 1415.

<sup>40</sup> Act of June 29, 1906, c. 3594, 34 Stat. L., 607.



- c. Safety Appliance Acts <sup>41</sup>
- d. Food and Drug Act <sup>42</sup>
- e. Meat Inspection Acts <sup>43</sup>
- f. Migratory Bird Treaty Act <sup>44</sup>
- g. The Lacey Act <sup>45</sup>
- h. Pisgah Game Preserve Act <sup>46</sup>
- i. Bird and Animal Reservation Trespass Cases <sup>47</sup>
- j. Insecticide and Fungicide Act <sup>48</sup>
- k. Animal Quarantine Acts <sup>49</sup>
- l. Locomotive Boiler Inspection Acts <sup>50</sup>
- m. Plant Quarantine Act <sup>51</sup>

Most of the commerce cases come from two sources, the Interstate Commerce Commission and the Department of Agriculture. They are chiefly concerned with minor violations involving small fines. The chief duty of the Admiralty Division is to pass on the cases submitted by the two sources to the district attorneys and to supervise their conduct.

**Public Lands Division.** The Public Lands Division is in the charge of an Assistant Attorney General. It deals with all matters relating to lands owned by the United States, lands to be acquired by the United States, and all land matters in the District of Columbia. It is divided into two sections. One section, under the immediate charge of the Assistant Attorney General, takes charge of public land matters proper. The other has charge of titles and land litigation and condemnation in the District of Columbia.

This division supervises all matters concerning the vast undeveloped public domain. It brings suits to set aside illegal allot-

<sup>41</sup> Acts: March 2, 1893, c. 196, 27 Stat. L., 531, March 2, 1903, c. 976, 32 Stat. L., 943; April 14, 1910, c. 160, 36 Stat. L., 298.

<sup>42</sup> Act of June 30, 1906, c. 3915, 34 Stat. L., 768.

<sup>43</sup> Acts: August 30, 1890, c. 839, 26 Stat. L., 414, June 30, 1906, c. 3913, 34 Stat. L., 669; March 4, 1907, c. 2907, 34 Stat. L., 1256, 1260.

<sup>44</sup> Act of July 3, 1918, c. 128, 40 Stat. L., 755.

<sup>45</sup> Act of May 25, 1900, c. 553, 31 Stat. L., 187.

<sup>46</sup> Act of August 21, 1916, c. 368, 39 Stat. L., 521.

<sup>47</sup> Crim. Cod., sec. 84.

<sup>48</sup> Act of April 26, 1910, c. 191, 36 Stat. L., 331.

<sup>49</sup> Acts: May 29, 1884, c. 60, 23 Stat. L., 31; February 2, 1903, c. 349, 32 Stat. L., 791; March 3, 1905, c. 1496, 33 Stat. L., 1264.

<sup>50</sup> Acts: February 17, 1911, c. 103, 36 Stat. L., 913; March 4, 1915, c. 169, 38 Stat. L., 1192.

<sup>51</sup> Acts: August 20, 1912, c. 308, 37 Stat. L., 315; March 4, 1913, c. 145, 37 Stat. L., 853; March 4, 1917, c. 179, 39 Stat. L., 1165.

ments of public lands and their illegal conveyance. It supervises all suits relating to water rights, reclamation and irrigation projects, oil lands, forest reserves, and boundary disputes in which the interest of the United States in land is involved. It brings all necessary condemnation proceedings in the name of the United States. It supervises, finally, all litigation relating to Indian lands and Indian affairs except crime and Indian depredation claims. All these classes of cases involve both civil and criminal matters.

Condemnation proceedings usually have to do with military affairs or forest reserves. When land is acquired without going into court, titles must be examined. The law requires that owners of lands to be purchased by the United States must have a clear title to the satisfaction of the Attorney General.<sup>82</sup> In the District of Columbia, this extends not only to lands in which the United States is interested but also to lands in which the District of Columbia is interested.

Congress recently passed an act for the settlement of the land problems of the Pueblo Indians in New Mexico, which originated before the treaty of Guadalupe-Hidalgo in 1848, when conflicts arose between Spanish and Mexican grants. Time and the acquisition of California by the United States added to the complexity, so that Congress was forced finally to provide machinery for the settlement of land titles in the Pueblo districts.<sup>83</sup> The act provides for a Pueblo Lands Board to determine the facts preliminary to having the Attorney General bring suits to quiet all titles in the Pueblo Indian district. The Board is made up of an assistant acting for the Attorney General, an assistant acting for the Secretary of the Interior, and a member appointed by the President. The Attorney General has appointed an attorney from the Public Lands Division as his representative. The Board has its headquarters in Santa Fé. It is taking testimony and making surveys, and will finally make reports and recommendations for actions to be taken to quiet title to the lands in dispute. These actions will be brought by the Public Lands Division of the Department of Justice.

**Criminal Division.** The Criminal Division is in the charge of an Assistant Attorney General. It has to do generally with criminal

<sup>82</sup> Sec. 355, Rev. Stat.

<sup>83</sup> Act of June 7, 1924, c. 331, 43 Stat. L., 636. See House Hearings on the Department of Justice bill, 1926, p. 139 ff.

prosecutions under the laws of the United States. It comes into the closest contact with the district attorneys and must necessarily work in close coöperation with the Bureau of Investigation.

The Criminal Division is charged with the effective enforcement of the criminal laws of the United States, not only in the continental United States, but also in Alaska, Hawaii, and Porto Rico. Its work falls into the following classification:

I. Crimes in General:

- a. Frauds, except public lands and Indian land frauds which are handled by the Division of Public Lands
- b. National Banking Act<sup>41</sup>
- c. Postal Laws<sup>42</sup>
- d. Naturalization Acts<sup>43</sup>
- e. Immigration Acts<sup>44</sup>
- f. Criminal prosecutions under the internal revenue laws  
This head comes in for only the most general attention of this division. More particular attention is given to crimes under these laws by the office of the Chief Counsel of the Bureau of Internal Revenue.
- g. Crimes on the high seas<sup>45</sup>
- h. Crimes on Indian reservations, except those dealing with Indian trust property<sup>46</sup>
- i. Stealing from interstate shipments<sup>47</sup>
- j. Fraudulent Bills of Lading Act<sup>48</sup>
- k. Violations of the Bankruptcy Act<sup>49</sup>
- l. National Motor Vehicle Theft Act<sup>50</sup>
- m. Criminal violations of War Risk Insurance Act<sup>51</sup>

<sup>41</sup> See note 29.

<sup>42</sup> *Crim. Cod.*, sec. 179 to 231; Acts: March 4, 1911, c. 241, sec. 2, 36 Stat. L., 1339; March 3, 1917, c. 162, sec. 5, 39 Stat. L., 1069; Oct. 3, 1917, c. 63, sec. 1110, 40 Stat. L., 329; May 16, 1918, c. 75, sec. 2, 40 Stat. L., 554; February 23, 1919, c. 18, sec. 1407, 40 Stat. L., 1151; May 25, 1920, c. 196, 41 Stat. L., 620.

<sup>43</sup> Acts: July 14, 1870, c. 254, 16 Stat. L., 254; June 29, 1906, c. 3592, 34 Stat. L., 596.

<sup>44</sup> Acts: August 2, 1882, c. 374, 22 Stat. L., 186; February 20, 1907, c. 1134, 34 Stat. L., 898; February 5, 1917, c. 29, 39 Stat. L., 874; October 16, 1918, c. 186, 40 Stat. L., 1012; May 11, 1922, c. 187, sec. 3, 42 Stat. L., 540.

<sup>45</sup> *Crim. Cod.*, secs. 272 to 310; Act of June 15, 1917, c. 30, Title III, 40 Stat. L., 221.

<sup>46</sup> See act of June 25, 1910, c. 431, sec. 5, 36 Stat. L., 857.

<sup>47</sup> Act of February 13, 1913, c. 50, sec. 1, 37 Stat. L., 670.

<sup>48</sup> Act of February 13, 1893, c. 105, 27 Stat. L., 445.

<sup>49</sup> Act of July 1, 1898, c. 541, sec. 29, 30 Stat. L., 554.

<sup>50</sup> Act of October 29, 1919, c. 89, 41 Stat. L., 324.

<sup>51</sup> See above note 37.

- n.* All other crimes not related to laws specifically assigned to some other division of the Department
2. Criminal Practice and Procedure:
  - a.* Indictments
  - b.* Grand Juries
  - c.* Search Warrants
  - d.* Bail
 

Under these heads, the Criminal Division includes such matters as the appointment of special district attorneys assigned to grand jury matters and supervision over the district attorneys in the matter of requiring good securities on bail bonds.
3. Pardons and Paroles
 

Under this head the division is called upon to give its opinion and advice as to the granting or disapproval of pardons, paroles, and commutations of sentences.
4. Extradition
 

The Criminal Division handles all requisitions for international extraditions. Papers are prepared in this division and sent to the Department of State, where the proper representations are made under the general direction of the Solicitor for the State Department.
5. War Crimes other than those arising out of fraudulent contracts
  - a.* Selective Service Act <sup>66</sup>
  - b.* Espionage Act <sup>66</sup>
  - c.* Trading with the Enemy Act <sup>67</sup>
  - d.* Treason and Sedition <sup>68</sup>
6. Alien Enemies
 

Under this head are included not only crimes but also all matters relating to alien enemies except alien property matters, which fall in the Admiralty Division.
7. Passports <sup>69</sup>

This head includes all litigation whether civil or criminal relating to passports. This is not usually a very prolific source of litigation.
8. Explosive Act <sup>70</sup>

Under the direction of the Solicitor General, the Criminal Division supervises and directs appeals in criminal cases from

<sup>66</sup> Act of May 18, 1917, c. 15, 40 Stat. L., 76.

<sup>67</sup> Act of June 15, 1917, c. 30, 40 Stat. L., 217, Titles I, III, IV, IX, X, XII, and sec. 7 of Title V.

<sup>68</sup> Act of October 6, 1917, c. 106, sec. 19, 40 Stat. L., 425.

<sup>69</sup> Crim. Cod., secs. 1 to 8.

<sup>70</sup> Act of June 15, 1917, c. 30, Titles IX, 40 Stat. L., 227.

<sup>71</sup> Act of October 6, 1917, c. 83, 40 Stat. L., 385.

the districts courts to the circuit court of appeals. Answers to petitions for writs of certiorari before the Supreme Court in cases arising under the above laws are prepared whenever necessary in the Criminal Division, which handles such cases in the Supreme Court under the direction of the Solicitor General. The Criminal Division comes in close contact with the district attorneys and is responsible to a great extent for the proper conduct of their offices. It obtains the transference of federal judges when necessary from one district to another.

**Office of Assistant to the Solicitor General.** In 1887 Congress created the Interstate Commerce Commission and provided that its orders should be enforced in the courts by the district attorneys under the supervision of the Attorney General.<sup>12</sup> In 1910 the Commerce Court was established and given jurisdiction over "cases brought to enjoin, set aside, annul, or suspend . . . any order of the Interstate Commerce Commission,"<sup>13</sup> and the Attorney General was given "charge and control of the interests of the government in all cases and proceedings in the Commerce Court and the Supreme Court."<sup>14</sup> Congress began immediately to make appropriations for this service.<sup>15</sup> In 1913 the Commerce Court was abolished and cases falling within its jurisdiction were transferred to the district courts.<sup>16</sup> The appropriation for the cost of defending suits in these courts is carried in a separate item each year. In the appropriation acts for 1923 and subsequent years the Attorney General has been authorized to appoint an Assistant to the Solicitor General to represent the United States in all matters arising under the Interstate Commerce Act of 1887.<sup>17</sup>

The Office of the Assistant to the Solicitor General is provided with one clerk. The Anti-Trust Division and the Admiralty Division handle most of the Interstate Commerce cases. The Assistant to the Solicitor General gives his time exclusively to suits brought in federal district courts to set aside or enjoin orders of the Interstate Commerce Commission.

<sup>12</sup> Act of February 4, 1887, c. 104, sec. 16, 24 Stat. L., 385.

<sup>13</sup> Act of June 18, 1910, c. 309, sec. 1, 36 Stat. L., 539.

<sup>14</sup> *Ibid.*, sec. 5, p. 543.

<sup>15</sup> Act of June 25, 1910, c. 385, sec. 1, 36 Stat. L., 799.

<sup>16</sup> Act of October 22, 1913, c. 32, 38 Stat. L., 219.

<sup>17</sup> Act of June 1, 1922, c. 204, 42 Stat. L., 613.

**Bureau of Investigation.** The Bureau of Investigation grew out of an annual appropriation for the inspection of judicial officers. The general detection of crime is a relatively recent addition to the duties of the Department. The Bureau has no statutory authorization except the appropriation acts. The pertinent section of the appropriation act for 1927 reads:

For the detection and prosecution of crimes against the United States; for the protection of the person of the President of the United States; the acquisition, collection, classification, and preservation of criminal identification records and their exchange with the officials of States, cities, and other institutions; for such other investigations regarding official matters under the control of the Department of Justice and the Department of State as may be directed by the Attorney General; . . . including a Director of the Bureau of Investigation . . . *Provided further*, That for the purpose of executing the duties for which provision is made by this appropriation, the Attorney General is authorized to appoint officials who shall be vested with the authority necessary for the execution of such duties.

The Bureau of Investigation was organized in 1908. Before that time investigators, agents, and accountants were detailed from the Treasury Department at the request of the Attorney General and paid from the appropriation for the detection and prosecution of crime. In 1908 the law forbade this practice," and the Department of Justice was forced to establish the Bureau of Investigation. At the present time the Bureau is not confined in its activities to matters arising in the Department of Justice. It is regularly called upon to investigate matters arising in every department of the government.

The headquarters of the Bureau is divided into seven divisions, three administrative and four technical. These divisions are designated officially by numbers, but they also have descriptive names. They are:

1. Office of Director (Division 1)
2. Administrative Division (Division 5)
3. Division of Mails and Files (Division 7)
4. General Intelligence Division (Division 2)
5. Theft and Frauds Division (Division 3)
6. Anti-Trust Division (Division 4)
7. Criminal Identification Division (Division 6)

" Act of May 27, 1908, c. 200, 35 Stat. L., 328.

The Director of the Bureau receives the same salary as an assistant Attorney General, \$7500. He supervises the general operation of the Bureau and its field force. He attends personally to all matters of personnel. The agents are picked with great care and their work is constantly examined by the Director.

The Administrative Division of the Bureau is under the direction of a chief clerk, who attends to the clerical matters relating to personnel and generally supervises the routine administration of the Bureau.

The mail of the Bureau of Investigation is not distributed and filed in the Division of Mails and Files of the Department. All the mails coming in the first instance to the latter organization are sent to the Division of Mails and Files of the Bureau. The nature and bulk of the communications and material received warrant an organization separate from the departmental division. The mail is opened, recorded, and referred to the proper division of the Bureau and then filed.

The files contain not only communications but also a great mass of newspaper clippings and other material likely to prove useful in the work of the Bureau. These files are carefully guarded. Persons not officially interested in the files are not authorized to look into them or even to enter the file room.

The General Intelligence Division supervises the investigation of both civil and criminal matters arising under the following heads: Alaskan matters,<sup>78</sup> bondsmen and sureties, civil rights,<sup>79</sup> domestic violence,<sup>80</sup> crimes on the high seas,<sup>81</sup> impersonation,<sup>82</sup> crimes on Indian and government reservations,<sup>83</sup> intimidation of witnesses,<sup>84</sup> jury matters,<sup>85</sup> interdepartmental cases, international border mat-

<sup>78</sup> Acts: March 3, 1899, c. 429, 30 Stat. L., 1253; February 6, 1909, c. 80, sec. 8, 35 Stat. L., 601; May 7, 1906, c. 2083, sec. 15, 34 Stat. L., 174; August 24, 1912, c. 387, sec. 3, 37 Stat. L., 512.

<sup>79</sup> Secs. 1980, 1981, Rev. Stat.; Crim. Cod., secs. 19 to 26; act of October 16, 1918, c. 187, 40 Stat. L., 1013.

<sup>80</sup> Crim. Cod., sec. 140. See Annual Report, 1925, p. 4, and Criminal Code generally.

<sup>81</sup> Crim. Cod., secs. 272 to 310; act of June 15, 1917, c. 30, Title III, 40 Stat. L., 221.

<sup>82</sup> Crim. Cod., secs. 32 to 33.

<sup>83</sup> See act of June 25, 1910, c. 431, 36 Stat. L., 855.

<sup>84</sup> Crim. Cod., secs. 135, 136.

<sup>85</sup> Crim. Cod., secs. 135 to 137.

ters," sending of obscene matter by interstate express," official corruption," naturalization frauds," passport frauds," peonage," and such miscellaneous matters as may be assigned.

Alaskan matters include the whole field of crime in that territory, the infractions of both federal and territorial laws. The Bureau of Investigation and the United States marshals constitute the police force there. It investigates the financial status of the sureties on all the bonds of government officers under the control of the Attorney General and of the bondsmen for parties in the federal courts. Under the head of civil rights and domestic violence come assaults and intimidations in national elections and attacks on officers. At the present time, the Bureau is called upon frequently to investigate impersonations of prohibition agents. This division, however, investigates impersonations not only of prohibition agents but also of all government officers as well as the illegal use of the Red Cross emblem. Crimes on the high seas and on Indian and government reservations fall exclusively under federal jurisdiction. The Bureau of Investigation does most of the detective work required in this connection. It carries on work for each of the other nine departments and also for the independent offices and agencies and boards of the government, such as the Interstate Commerce Commission, the Library of Congress, and the Red Cross. During the fiscal year 1924, 1145 interdepartmental cases arose, including some from each of the other nine executive departments. In 1925, \$173,992.70 of the Bureau's funds went into these investigations. The General Intelligence Division, under the head of international border matters, enforces the presidential proclamations prohibiting the transportation of arms to disorderly countries and assists in the enforcement of the immigration laws. Prohibition enforcement has given rise to considerable official corruption. The Department of Justice agents have uncovered much of this. During 1925 the Bureau uncovered a bad situation at the Atlanta Penitentiary, resulting in criminal prosecutions of a number of officers. Inves-

<sup>86</sup> *Crim. Cod.*, secs. 9 to 18. Acts: May 7, 1917, c. 11, 40 Stat. L., 39; June 15, 1917, c. 30, Title V, 40 Stat. L., 221.

<sup>87</sup> *Crim. Cod.*, sec. 245.

<sup>88</sup> *Crim. Cod.*, secs. 85 to 124.

<sup>89</sup> Act of June 29, 1906, c. 3592, sec. 23, 34 Stat. L., 603.

<sup>90</sup> Act of June 15, 1917, c. 30, Title IX, 40 Stat. L., 227.

<sup>91</sup> *Crim. Cod.*, secs. 246 to 271.



tigations of corruption cover also the acts of the judicial officers and federal judges. Under the head of miscellaneous matters in this division was investigated in 1925 a series of very baffling murders among the Osage Indians.

The Theft and Fraud Division has charge of violations of the national banking act,<sup>88</sup> using the mails to defraud,<sup>89</sup> crimes under the bankruptcy act,<sup>90</sup> thefts from interstate shipments,<sup>91</sup> thefts and embezzlements from the government,<sup>92</sup> violations of the war risk insurance act,<sup>93</sup> false claims<sup>94</sup> and miscellaneous frauds against the government,<sup>95</sup> postal violations,<sup>96</sup> and corrupt practices.<sup>97</sup>

Under the general supervision of the division, the field accountants operate. Since the war this division has given attention particularly to corruption and fraud in connection with government contracts.<sup>98</sup>

The Anti-Trust and Miscellaneous Division supervises investigation under the following heads: Sherman act,<sup>99</sup> white slave traffic act,<sup>100</sup> national defense act,<sup>101</sup> apprehension of deserters from the Army, Navy, and Marine Corps,<sup>102</sup> motor vehicle theft act,<sup>103</sup> interstate transportation of lottery tickets,<sup>104</sup> unlawful wearing of military and naval uniforms,<sup>105</sup> use of interstate railroad passes,<sup>106</sup> interstate transportation of prize-fight films,<sup>107</sup> violation of inter-

<sup>88</sup> Secs. 5133 to 5198, Rev. Stat., act of December 23, 1913, c. 6, 38 Stat. L., 251, and acts amendatory thereto. See 5 Fed. Stat. Ann. 75.

<sup>89</sup> Crim. Cod., sec. 215.

<sup>90</sup> Crim. Cod., sec. 29, A and B.

<sup>91</sup> Act of February 13, 1913, c. 50, sec. 1, 37 Stat. L., 670.

<sup>92</sup> Crim. Cod., secs. 47 and 48.

<sup>93</sup> Act of October 6, 1917, c. 293, 38 Stat. L., 711.

<sup>94</sup> Crim. Cod., sec. 35.

<sup>95</sup> Crim. Cod., sec. 37.

<sup>96</sup> Crim. Cod., secs. 179 to 204.

<sup>97</sup> Act of June 25, 1910, c. 392, 36 Stat. L., 822.

<sup>98</sup> For a discussion of the work falling under this division for 1925, see Annual Report, 1925, p. 111 ff.

<sup>99</sup> Act of July 2, 1890, c. 647, 26 Stat. L., 209.

<sup>100</sup> Act of June 25, 1910, c. 395, 36 Stat. L., 825.

<sup>101</sup> Act of August 29, 1916, c. 418, sec. 2, 39 Stat. L., 649.

<sup>102</sup> Sec. 1624, Rev. Stat.; Crim. Cod., sec. 42; act of June 16, 1890, c. 426, 26 Stat. L., 157.

<sup>103</sup> Act of October 29, 1919, c. 89, 41 Stat. L., 324.

<sup>104</sup> Crim. Cod., sec. 237.

<sup>105</sup> Acts: June 3, 1916, c. 134, sec. 125, 39 Stat. L., 216; August 29, 1916, c. 418, sec. 1, 39 Stat. L., 649; July 9, 1918, c. 142, sec. 10, 40 Stat. L., 891.

<sup>106</sup> Act of June 29, 1906, c. 3591, sec. 1, 34 Stat. L., 584, as amended by act of April 13, 1908, c. 143, sec. 1, 35 Stat. L., 60.

<sup>107</sup> Act of July 31, 1912, c. 263, 37 Stat. L., 240.

state commerce laws,<sup>122</sup> violation of the food and drug act,<sup>123</sup> and criminal violation of the census laws<sup>124</sup> and the income tax law.<sup>125</sup>

The Criminal Identification Division was located at Leavenworth Penitentiary and was operated with convict help until 1923, when it was moved to Washington. Although the exchange of records is a matter purely of comity, the Bureau of Investigation now enjoys complete coöperation with the police chiefs throughout the country. The Bureau has acquired the records of the International Association of Chiefs of Police, and made arrangements for direct communication with foreign police bureaus, eliminating the delay of diplomatic communications. There are now (1927) on file over one million fingerprint records and about a quarter-million Bertillon records. During the fiscal year 1926, 39,364 identifications were made; this was about 29 per cent of the identifications sought. The number of contributors to the records is 1147.

The Bureau of Investigation employs 117 persons in its headquarters. Of these forty-four make up the Criminal Identification Division. In 1926 the Bureau carried on investigations which led to cases recovering for the government \$824,659.93 in fines and \$2,238,880.85 in money illegally withheld.

The Bureau divides the United States and Alaska into thirty-three districts.<sup>126</sup> In each of these districts at some convenient point is a field office. At the present time the field force includes 475 persons, consisting of 307 investigating agents, seventy-nine accountants, seventy-seven stenographers, a translator, two telephone operators, and eleven clerks. Preference in the appointment of agents is given to men with some legal training; more than one-third of the agents are so qualified. One of the most notable points of efficiency of the force is that it has a uniform filing system in each of its field offices. This system and the offices generally are carefully supervised by frequent visits of inspectors from Wash-

<sup>122</sup> See above, n. 10.

<sup>123</sup> Act of June 30, 1906, c. 3915, 34 Stat. L., 768.

<sup>124</sup> Acts: April 30, 1912, c. 102, sec. 4, 37 Stat. L., 107; July 22, 1912, c. 249, secs. 3, 4, 37 Stat. L., 198; August 7, 1916, c. 274, secs. 2, 3, 39 Stat. L., 437; March 3, 1919, c. 97, secs. 21-24, 26, 40 Stat. L., 1299ff.

<sup>125</sup> Act of November 23, 1921, c. 136, sec. 253, 42 Stat. L., 268.

<sup>126</sup> House Hearings on Department of Justice appropriation bill, 1927, p. 108.

ington. It is possible for any one of the agents in the force to operate any office in the United States to which he may be sent.

To each district an agent is permanently assigned and put in charge. The other agents circulate throughout the United States from district to district as investigations require. When an agent goes into a district, he must report immediately to the agent in charge and keep him informed of his movements. The agent in charge is responsible for the conduct of each case that is being investigated in his district. He makes to the Bureau a semi-monthly report of each case being investigated in his district. When these reports reach Washington, they are referred to the division of the Bureau charged with the general supervision of that particular subject.<sup>137</sup>

<sup>137</sup> Besides the specific references given this chapter has been based on personal investigation and the following printed sources:

Attorney General, Annual Report, 1920 to 1926.

Department of Justice, Register, 1922, 1924.

Hearings on the Department of Justice Appropriation Bill.

House hearing, 1925, 1926, 1927.

Senate hearing, 1926.

The Budget, 1927.

Digest of Appropriation, 1926, 1927.

## CHAPTER V

### THE SOLICITORS

When the Department of Justice was created, the law officers in the other departments were transferred to it.<sup>1</sup> These were the Solicitor of the Treasury, the Assistant Solicitor of the Treasury, the Solicitor of Internal Revenue, the Naval Solicitor, and the Examiner of Claims for the Department of State.

The Office of Naval Solicitor was abolished in 1878,<sup>2</sup> but recreated in 1908 as Solicitor of the Navy Department—an office not in the Department of Justice.<sup>3</sup> The title "Examiner of Claims" has been changed to "Solicitor for the Department of State."<sup>4</sup> In 1871 Congress authorized a third Assistant Attorney General,<sup>5</sup> who was almost immediately assigned to the Department of the Interior to perform the duties of a Solicitor because the law work in that department had become very heavy.<sup>6</sup> The title was changed in 1914 to "Solicitor for the Department of the Interior."<sup>7</sup> When the Department of Commerce and Labor was created, a Solicitor of the Department of Justice was provided for,<sup>8</sup> and, again, when the Department of Labor was created a Solicitor was authorized.<sup>9</sup> The Post Office Department was provided with an Assistant Attorney General, to be appointed by the Postmaster General.<sup>10</sup> The title was changed to "Solicitor for the Post Office Department" in 1914.<sup>11</sup> For a long while, the appropriations for the Solicitor and the Assistant Attorney General for the Post Office Department were made to the Department of Justice. In recent years, however, the

<sup>1</sup> Act of June 22, 1870, c. 150, sec. 3, 16 Stat. L., 162; sec. 349, Rev. Stat.

<sup>2</sup> Act of June 19, 1878, c. 329, sec. 1, 20 Stat. L., 205.

<sup>3</sup> Act of May 22, 1908, c. 186, sec. 1, 35 Stat. L., 218.

<sup>4</sup> Act of March 3, 1891, c. 541, sec. 1, 26 Stat. L., 945.

<sup>5</sup> Act of February 25, 1871, c. 72, 16 Stat. L., 432.

<sup>6</sup> 18 Op. 57.

<sup>7</sup> Act of July 16, 1914, c. 141, sec. 1, 38 Stat. L., 497.

<sup>8</sup> Act of March 18, 1904, c. 716, sec. 1, 33 Stat. L., 135.

<sup>9</sup> Act of March 4, 1913, c. 141, sec. 7, 37 Stat. L., 738.

<sup>10</sup> Act of June 8, 1872, c. 335, sec. 3, 17 Stat. L., 284; sec. 390, Rev. Stat.

<sup>11</sup> Act of July 16, 1914, c. 141, sec. 1, 38 Stat. L., 497.

Solicitor has been provided for in the Post Office appropriation acts,<sup>12</sup> and he is no longer considered an officer of the Department of Justice.<sup>13</sup> The Office of the Solicitor of Internal Revenue was abolished by the revenue act of 1926 and in his place was appointed a General Counsel, an officer not of the Department of Justice.<sup>14</sup> He performs, however, the duties of a departmental solicitor. His office is the largest single law office in the government. His salary is \$10,000.

The Department of Justice now includes the following Solicitors:

1. Solicitor for the Department of the Interior
2. Solicitor for the Department of State
3. Solicitor of the Treasury and two Assistant Solicitors
4. Solicitor of the Department of Commerce and one Assistant Solicitor
5. Solicitor for the Department of Labor<sup>15</sup>

The following departmental solicitors are not officers of the Department of Justice:

1. Solicitor for the Department of Agriculture<sup>16</sup>
2. Solicitor for the Post Office Department<sup>17</sup>
3. Solicitor for the Department of the Navy<sup>18</sup>
4. Chief Clerk and Solicitor for the Department of War<sup>19</sup>
5. General Counsel of the Bureau of Internal Revenue

None of the Solicitors either in the Department of Justice or in the other departments is any longer mentioned in the appropriation acts. With the exception of the Solicitor for the Interior Department, the Solicitors of the Department of Justice are now paid from the fund for "other professional services." The Solicitors who are not members of the Department of Justice are paid from a similar fund in their departments. Provision for the complete office force of the Solicitors of the Treasury, the Commerce

<sup>12</sup> Acts: June 1, 1922, c. 204, 42 Stat. L., 611; February 14, 1923, c. 79, 42 Stat. L., 1248. See Department of Justice, Register, 1922.

<sup>13</sup> Reorganization of executive departments, 67 Cong., S. doc. 302.

<sup>14</sup> Act of February 26, 1926, c. 27, sec. 1201 (a), 44 Stat. L., 126.

<sup>15</sup> Act of January 3, 1923, c. 21, Title II, 42 Stat. L., 1078.

<sup>16</sup> Act of February 26, 1923, c. 119, 42 Stat. L., 1289.

<sup>17</sup> See note 12.

<sup>18</sup> Act of July 1, 1922, c. 259, 42 Stat. L., 788.

<sup>19</sup> Act of March 2, 1923, c. 178, 42 Stat. L., 1383.

Department, and the Labor Department is made in the Department of Justice Act.<sup>20</sup> The Solicitor for the Interior Department and his subordinates receive their appropriation through the Interior Department Act.<sup>21</sup> The office force of the Solicitor for the State Department includes eight Assistant Solicitors appointed by the Secretary of State, and is provided for in the State Department appropriation act.<sup>22</sup>

All Solicitors, whether officers of the Department of Justice or of the departments in which they serve, generally perform the same duties. The following discussion, however, is confined to those Solicitors who are nominally officers of the Department of Justice.

The Solicitors of the Department of Justice are appointed by the President, with the advice and consent of the Senate. In the appointment of the subordinate officers of a department, the President, as is well known, usually accepts the recommendation of the department head. The Solicitors, therefore, are appointed on the recommendation of the Attorney General, who usually approves and passes on the recommendation of the head of the department to which the Solicitor is to be attached.<sup>23</sup>

The law prescribing the duties of the Solicitors of the Department of Justice with the exception of the Solicitor of the Treasury is meagre. They nominally exercise their functions under the supervision and control of the Attorney General.<sup>24</sup> According to the law, the Attorney General may require any officer of the Department, including the Solicitors, to perform any duty that the Department is called upon to perform.<sup>25</sup> The Solicitors, "under the direction of the Attorney General, give all opinions and render all services requiring the skill of persons learned in the law necessary to enable" the President, the heads of departments, the heads of bureaus, and other departmental officers to perform their functions.<sup>26</sup> The direction of the Solicitors by the Attorney General is so slight that for all practical purposes they are undirected by him. The At-

<sup>20</sup> Act of January 3, 1923, c. 21, Title II, 42 Stat. L., 1078.

<sup>21</sup> Act of January 24, 1923, c. 42, sec. 1, 42 Stat. L., 1175; House Hearings on Interior Department appropriation bill, 1927, p. 36.

<sup>22</sup> Act of January 3, 1923, c. 21, Title I, 42 Stat. L., 1068.

<sup>23</sup> Joint Committee on the Reorganization of the Executive Departments, Hearings, 68 Cong. 1 sess., 1924, pp. 89 and 314.

<sup>24</sup> Sec. 350, Rev. Stat.

<sup>25</sup> Sec. 360, Rev. Stat.

<sup>26</sup> Sec. 361, Rev. Stat.

torney General considers them as "house attorneys," for the convenience of the respective departments to which they are attached.<sup>27</sup> With the exception that a Solicitor or one of his assistants usually attends court to assist a district attorney in, or to conduct, a case in which questions of law arise with which he is particularly familiar, a Solicitor is never required to perform duties as an officer of the Department of Justice. As for the requirement that all legal officers of the government should be officers of the Department of Justice, the appropriation acts have long since reduced that to a nullity. The duties of the departmental Solicitors, then, are to render opinions and other legal aid required by officers of the departments to which they are attached. The Solicitors, as a general thing, do not even hold informal conferences with the Attorney General.<sup>28</sup>

The Solicitors' opinions are to be clearly distinguished from those of the Attorney General. The opinions of the Attorney General will be discussed later. Here it is necessary to point out only that the Attorney General renders opinions solely to heads of departments on matters of law affecting decisions which the heads themselves must make. A Solicitor, however, may render opinions on law and fact to any one in the department to which he is attached. Whatever force the opinions of the Attorney General may have, the opinions of the Solicitors are not considered as having force as legal justification for the actions of the persons whom they advise.<sup>29</sup>

**Solicitor of the Treasury.** The Solicitor of the Treasury holds an unique office in the national government. He was the precursor and model for all the Solicitors, but the fact that his powers and duties are unique must always be remembered. The offices of the other Solicitors are not to be compared to that of the Solicitor of the Treasury.

The Solicitor of the Treasury is an officer of the Department of Justice<sup>30</sup> and as such exercise his functions under the supervision

<sup>27</sup> Hearings on Reorganization, 1924, p. 314; 18 Op. 57; House Hearings on the Department of Justice appropriation bill, 1925, pp. 23-33.

<sup>28</sup> House Hearings on Department of Justice appropriation bill, 1925, p. 30.

<sup>29</sup> See 20 Op. 654. In this opinion Attorney General Olney gives an excellent exposition of the relation of the Attorney General to the Solicitors.

<sup>30</sup> Sec. 349, Rev. Stat.; 18 Op. 59; 20 Op. 714.

of the Attorney General.<sup>21</sup> To this generalization, however, there seems to be one exception. "The Solicitor of the Treasury, under the direction of the Secretary of the Treasury shall take cognizance of all frauds or attempted frauds upon the revenue, and shall exercise a general supervision over the measures for their prevention and detection, and for the prosecution of persons charged with the commission thereof."<sup>22</sup> Except in cases of fraud and unless he is given some specific duty, such as deciding a claim, by an act of Congress,<sup>23</sup> the Solicitor of the Treasury performs his duties under the direction of the Attorney General. This direction, however, is scarcely more than nominal; the Solicitor acts under the law directly and on his own initiative.<sup>24</sup>

Whatever powers under the law the Auditor for the Post Office in the General Accounting Office may theoretically have in regard to postal legal matters,<sup>25</sup> the Attorney General actually exercises the final control over all cases in law and equity affecting the Post Office and its revenues. The Solicitor of the Treasury has been designated by the Attorney General to superintend the collection of all debts due to the Post Office Department, including all penalties and forfeitures imposed on postmasters for failing to make returns or pay over the proceeds of their offices, to direct suits and legal proceedings, and to take all such measures as may be authorized by law to enforce the prompt payment thereof.<sup>26</sup>

The Solicitor of the Treasury has general charge of suits against delinquent officers. In every department there are disbursing officers, whose accounts are subject to audit. When a disbursing officer fails to render his accounts properly and on time, the auditor reports the facts to the Solicitor of the Treasury, who must proceed immediately with the proper legal action.<sup>27</sup> This does not mean, however, that the Solicitor has no discretion. He may and

<sup>21</sup> Secs. 350, 372, Rev. Stat.

<sup>22</sup> Sec. 376, Rev. Stat.; 20 Op. 714.

<sup>23</sup> See *Kendall, v. United States*, 12 Peters 524 (1838).

<sup>24</sup> 18 Op. 57.

<sup>25</sup> Act of July 2, 1836, c. 270, sec. 14, 16, 5 Stat. L., 82, 83; act of June 22, 1870, c. 150, sec. 7, 16 Stat. L., 163; act of June 8, 1872, c. 335, sec. 23, 17 Stat. L., 288; act of July 31, 1894, c. 174, sec. 4, 28 Stat. L., 206; secs. 292, 381, 382, Rev. Stat. See also act of February 26, 1896, c. 33, 29 Stat. L., 25. See above, p. 9, note 50.

<sup>26</sup> Instructions to court officials, 1925, No. 1078.

<sup>27</sup> Secs. 3633, 3634, Rev. Stat., as amended by act of July 31, 1894, c. 174, sec. 4, 28 Stat. L., 205.



often does decline to bring suits on the report of the auditor if he considers that there is not sufficient evidence to sustain an action. The law provides that the salary of an officer shall be retained by the proper accounting officer until full payment of any money due from him is made into the Treasury. Sometimes there is a conflict of opinion as to the proper amount owed to the United States. In such a case the officer directs the proper auditor to notify the Solicitor of the Treasury to start a suit against him, and the latter, within sixty days, must start a suit against the officer and the sureties on his bond if he be bonded.<sup>28</sup> One of the methods of proceeding against a delinquent officer is by distress warrant issued by the Solicitor of the Treasury. A collector of internal revenue, for instance, may be proceeded against by distress warrant if he fails to collect, pay over, or account for moneys properly.<sup>29</sup> Other officers who have received money to be paid over into the Treasury may be similarly proceeded against if they fail to pay over or account for such money.<sup>30</sup> Distress warrants are, in fact, rarely resorted to. The Solicitor of the Treasury considers their use rather "highhanded" and prefers more formal legal actions.

Over suits arising from breach of contract in the Government Printing Office, the Solicitor of the Treasury exercises control. The Public Printer contracts for paper, and the contractors are required to post a bond with the United States for the faithful performance of their contracts. It is the duty of the Solicitor to bring the suits on these bonds if the contractors default.<sup>31</sup>

The Solicitor of the Treasury is charged with the conduct of all suits under the National Bank Act. The law provides that all such proceedings to which the United States or any of its officers or agents are parties are to be conducted by the district attorneys under the direction of the Solicitor of the Treasury.<sup>32</sup> It has been necessary, however, to relieve the Solicitor of most of his duties under this head. Suits arising under the banking acts are now conducted by the district attorneys under the direction of the

<sup>28</sup> Sec. 1766, Rev. Stat. See also 26 Op. 77, and cases discussed below, Chap. XIII.

<sup>29</sup> Sec. 3217, Rev. Stat.

<sup>30</sup> Sec. 3625, Rev. Stat., as amended by acts: February 27, 1877, c. 69, sec. 1, 19 Stat. L., 249; July 31, 1894, c. 174, sec. 4, 28 Stat. L., 205.

<sup>31</sup> Act of January 12, 1895, c. 23, sec. 10, 28 Stat. L., 602.

<sup>32</sup> Sec. 380, Rev. Stat.

Admiralty Division of the Department of Justice. The Solicitor handles only the minor banking matters that arise in the Treasury Department and require hardly more than mere transmission to the proper district attorney. Actions on bonds and for forfeitures under the customs laws are also placed by law under the supervisions of the Solicitor of the Treasury;<sup>43</sup> but the Admiralty Division, again, has relieved the Solicitor of all but the minor cases that involve only routine questions and whose transmission to the Department of Justice would serve only to complicate matters.

Upon a report by a district attorney, or any special attorney or agent having charge of any claim in favor of the United States, showing in detail the condition of such claim and the terms upon which it may be compromised, and upon the recommendation of the Solicitor of the Treasury, the Secretary of the Treasury is authorized to compromise such claims,<sup>44</sup> including claims under the customs laws.<sup>45</sup> The exceptions to this provision are claims arising under the postal laws,<sup>46</sup> internal revenue laws,<sup>47</sup> employees' compensation law,<sup>48</sup> and the law providing for the compensation of persons injured in the Army and Navy.<sup>49</sup> The general provision has been interpreted to include cases arising under the immigration laws.<sup>50</sup> It extends, also, to the compromise of all judgments rendered in favor of the United States, including those under the internal revenue laws<sup>51</sup> and forfeited recognizances.<sup>52</sup> Judgments, however, for debts or damages due the Post Office Department are not within the general provision.<sup>53</sup>

Whenever the Secretary of the Treasury is given authority to compromise claims, or to remit, mitigate, or release fines, penalties, or forfeitures, the Solicitor of the Treasury will often be

<sup>43</sup> Rev. Stat., secs. 373, 374, 375, and sec. 3083, as amended by act of February 27, 1877, c. 69, sec. 1, 19 Stat. L., 247.

<sup>44</sup> Sec. 3469, Rev. Stat. See, however, Instructions to court officials, 1925, no. 1081.

<sup>45</sup> Act of September 21, 1922, c. 356, Title IV, sec. 617, 42 Stat. L., 987.

<sup>46</sup> Secs. 295, 409, Rev. Stat.; 13 Op. 540.

<sup>47</sup> Sec. 3229, Rev. Stat.; 29 Op. 217.

<sup>48</sup> Act of September 7, 1916, c. 458, sec. 29, 39 Stat. L., 747.

<sup>49</sup> Act of September 2, 1914, c. 293, 38 Stat. L., 711, sec. 313, added by act of October 6, 1917, c. 105, sec. 2, 40 Stat. L., 408.

<sup>50</sup> Act of February 5, 1917, c. 29, sec. 25, 39 Stat. L., 893.

<sup>51</sup> 13 Op. 479.

<sup>52</sup> 18 Op. 277.

<sup>53</sup> Sec. 295, Rev. Stat.

required to give legal advice. The Secretary exercises this power in connection with the additional duty secured by the bond given for the transportation of merchandise from one port to another," duties on equipment and repair to vessels," remissions under customs laws," claims for taxes on evidences of indebtedness of mining, manufacturing, or other corporations," cancellation of bonds or refunds of duties on goods injured or destroyed," and release of poor debtors from prison."

The Solicitor carries on any correspondence necessary in connection with the compromise of claims or the mitigation or releases which the Secretary of the Treasury may allow. In practice, compromises of claims are made according to rules promulgated by the Solicitor of the Treasury under the authority of the Attorney General and the Secretary of the Treasury.<sup>88</sup> In 1926 the United States realized \$2,999,543.78 on suits compromised on the recommendation of the Solicitor of the Treasury. The questions of the compromise of suits in general will be discussed later.

When lands or tenements are to be sold to satisfy a judgment in favor of the United States, the Solicitor of the Treasury must send an agent to bid a sum sufficient to cover all money due to the United States.<sup>89</sup> The custody of lands acquired by the United States in satisfaction of debts, except those acquired in satisfaction of debts arising under the internal revenue laws,<sup>90</sup> is assigned to the Solicitor of the Treasury, who is charged with their keeping or profitable disposal. If *any* land or property in which the United States has an interest is attached in any court, the Secretary of the Treasury may direct the Solicitor to enter into

<sup>88</sup> Sec. 3001, Rev. Stat., as amended by act of February 27, 1877, c. 69, sec. 1, 19 Stat. L., 247.

<sup>89</sup> Sec. 3115, Rev. Stat.

<sup>90</sup> Act of September 21, 1922, c. 356, Title IV, sec. 616, 42 Stat. L., 987.

<sup>91</sup> Act of March 3, 1875, c. 167, 18 Stat. L., 507.

<sup>92</sup> Sec. 2984, Rev. Stat., as amended by act of February 27, 1877, c. 69, sec. 1, 19 Stat. L., 247.

<sup>93</sup> Sec. 3471, Rev. Stat. See Acts: February 29, 1839, c. 35, 5 Stat. L., 321; January 14, 1841, c. 2, 5 Stat. L., 410; March 2, 1867, c. 180, 14 Stat. L., 543. Sec. 942, Rev. Stat. Cases under this provision still arise in those states allowing imprisonment for debt. See also sec. 410, Rev. Stat.

<sup>94</sup> Sec. 377, Rev. Stat., see *United States v. Beebe*, 180 U. S. 351 (1901).

<sup>95</sup> Sec. 3470, Rev. Stat.

<sup>96</sup> Sec. 3208, Rev. Stat.

a stipulation to release the land from such attachment.<sup>65</sup> While the Attorney General must certify the title to lands acquired by the United States for building purposes generally, exception is made in case of sites for lifesaving stations and pier heads. These are in the control of the Secretary of the Treasury, by whose direction the Solicitor of the Treasury is required to certify the titles to sites.<sup>66</sup>

The general supervision of surety companies that bond government officers is entrusted to the Secretary of the Treasury.<sup>67</sup> The Solicitor of the Treasury, however, is required to examine for the sufficiency of the sureties the bonds of the chief clerk of the Department of Agriculture,<sup>68</sup> of the collectors of internal revenue,<sup>69</sup> of the disbursing clerks in the several departments,<sup>70</sup> including the disbursing clerk of the Bureau of the Census,<sup>71</sup> of all officers in any mint or assay office authorized by the Secretary of the Treasury to have custody of public moneys,<sup>72</sup> and to approve the form of the bond of the Register of Copyrights.<sup>73</sup> As a matter of fact, the Secretary of the Treasury has assigned to the Solicitor the duty of examining all bonds required to be filed in the Treasury Department and all contracts which the Secretary is called upon to sign.

Before the Department of Justice Act of 1870, the Solicitor of the Treasury was such an important officer that the district attorneys, marshals, and clerks were required to report to him instead of the Attorney General. Only since 1861 has the chief law officer of the government had any substantial control over the lesser law officers. The Solicitor still has, however, authority to require reports from, or to direct, district attorneys, marshals, and clerks. With the approval of the Secretary of the Treasury,

<sup>65</sup> Secs. 3749, 3750, 3751, 3753, Rev. Stat.

<sup>66</sup> Acts: March 3, 1875, c. 130, sec. 1, 18 Stat. L., 372; March 2, 1889, c. 411, sec. 1, 25 Stat. L., 941.

<sup>67</sup> Act of March 23, 1910, c. 109, 36 Stat. L., 241.

<sup>68</sup> Sec. 524, Rev. Stat.

<sup>69</sup> Sec. 3143, Rev. Stat., as amended by act of March 1, 1879, c. 125, sec. 2, 20 Stat. L., 327.

<sup>70</sup> Sec. 176, Rev. Stat.

<sup>71</sup> Act of March 6, 1902, c. 139, sec. 4, 32 Stat. L., 51, as amended by act of June 30, 1902, c. 1325, 32 Stat. L., 506; act of July 2, 1909, c. 2, sec. 4, 36 Stat. L., 2.

<sup>72</sup> Sec. 3600, Rev. Stat.; Act of May 29, 1920, c. 214, sec. 1, 41 Stat. L., 654.

<sup>73</sup> Act of March 4, 1909, c. 320, sec. 50, 35 Stat. L., 1085.

he makes rules to govern the bringing of suits for the guidance of collectors of customs; and with the approval of the Attorney General, he makes rules for the guidance of the district attorneys and marshals.<sup>7</sup> He may also instruct the district attorneys, marshals, and clerks in regard to all suits in which the United States is a party.<sup>8</sup> This, however, does not extend to cases arising under the internal revenue laws. In such cases, rules and regulations for district attorneys and marshals are made by the Commissioner of Internal Revenue.<sup>9</sup> The Solicitor of the Treasury was once permitted by law to require many complicated reports from the court officers, and he is still entitled to receive reports;<sup>10</sup> but such reports now take the form of carbon copies of those sent to the Department of Justice.<sup>11</sup>

**Solicitor for the Department of Commerce.** The Solicitor for the Department of Commerce, in addition to giving general legal advice in the Department, examines bonds, contracts, leases, and such other instruments as are usually examined by a lawyer. In 1926, 133 opinions were rendered; 173 contracts examined; 104 contract bonds examined, drafted, and redrafted; fifty-seven official bonds examined; 106 leases examined, drafted, and redrafted; twenty-nine licenses examined, drafted, and redrafted; four insurance policies examined; twenty deeds examined, drafted, and redrafted; 201 bills and reports relating to legislation in reference to the department drafted; 3855 power-of-attorney cards examined; and 10,510 miscellaneous matters disposed of.<sup>12</sup>

**Solicitor for the Department of Labor.** The Solicitor for the Department of Labor performs duties similar to those of the Solicitor for the Department of Commerce.<sup>13</sup> In 1926 he rendered 218 written opinions; examined 283 contracts and leases; drafted and redrafted five forms of contracts, leases, and bonds; examined thirty contract bonds, 4462 bonds of alien immigrants, and two

<sup>7</sup>Sec. 377, Rev. Stat.

<sup>8</sup>Sec. 379, Rev. Stat.; 17 Op. 142.

<sup>9</sup>Sec. 3215, Rev. Stat.

<sup>10</sup>Rev. Stat., secs. 772, 773, as amended by act of April 9, 1910, c. 152, 36 Stat. L., 294; 791, 797; and 1057, as reenacted by Jud. Cod., sec. 143, 36 Stat. L., 1136.

<sup>11</sup>See Instructions, 1925, nos. 202, 203. But see Attorney General, Annual Report, 1926, p. 97.

<sup>12</sup>Attorney General, Annual Report, 1926, p. 122.

<sup>13</sup>Department of Justice, Register, 1922.

official bonds; drafted six bills for Congress; examined 3924 power-of-attorney cards authorizing agents of the Department of Labor to execute official and contract bonds for surety companies; and attended to 854 miscellaneous matters.<sup>79</sup> On occasion the Solicitor acts as Secretary of Labor.<sup>80</sup> Because the Department of Labor administers the immigration acts, the Solicitor exercises important functions in connection with cases arising over the exclusion and deportation of undesirable immigrants.

**Solicitor for the Department of State.** The Solicitor for the Department of State publishes no report. His primary duties are to examine the claims of foreigners against the United States, transmitted through foreign governments, and the claims of Americans against foreign governments. He also advises the officers of the State Department on questions of international law and handles applications for the extradition of criminals.<sup>81</sup> The Secretary of State may prescribe additional duties for the Solicitor, not inconsistent with his duties as an officer of the Department of Justice.<sup>82</sup> Among the leading international lawyers of to-day, John Bassett Moore once served as a law clerk in the office of the Solicitor and James Brown Scott once occupied the office of Solicitor.

**Solicitor for the Interior Department.** The Solicitor for the Interior Department, in addition to acting as legal adviser, presides over a board which hears all cases on appeal from the various bureaus. In the more important cases, this amounts to a real trial with oral arguments and briefs.<sup>83</sup> In 1924 the business of the office of the Solicitor was as follows: 1608 appeals and 329 rehearings in land cases; 1122 appeals and forty-seven rehearings in pensions cases; eighty-three appeals and seventeen rehearings in retirement cases; and 332 original hearings and eighty-six rehearings on war minerals relief cases. Twenty-two cases were instituted in the Supreme Court against the Department; these required briefing and assistance to the Solicitor General.<sup>84</sup>

<sup>79</sup> *Ibid.*, p. 123.

<sup>80</sup> Executive Order of May 5, 1921.

<sup>81</sup> Department of Justice, Register, 1922.

<sup>82</sup> Act of June 20, 1874, c. 328, sec. 1, 18 Stat. L., 90

<sup>83</sup> Department of Justice, Register, 1922.

<sup>84</sup> Interior Department, Annual Report, 1924, p. 35.

## CHAPTER VI

### THE UNITED STATES DISTRICT ATTORNEYS

District Attorneys are appointed by the President and confirmed by the Senate for a term of four years or until their successors are appointed. In case of temporary vacancy in the office of district attorney, the district court for the district where such vacancy exists or the Supreme Court of a territory or of the District of Columbia may fill such vacancy until a permanent appointment is made. The commission is issued from the Department of Justice and the attorney must take the prescribed oath, preferably in open court.<sup>1</sup>

The salaries of district attorneys are fixed by the Attorney General within the limits of \$3000 and \$7500, except the district attorneys for the southern district of New York, the northern district of Illinois, and the District of Columbia, for whom the maximum is placed at \$10,000. The Attorney General may readjust salaries within the above limits; but not oftener than once in four years.<sup>2</sup>

Before 1896 the district attorneys were paid by fees, which were fixed by law. In that year,<sup>3</sup> the law provided for annual salaries<sup>4</sup> and required that fees be paid into the Treasury.<sup>5</sup> The fees are still collected from private litigants,<sup>6</sup> but the Attorney General now determines the amount of salary. The salaries paid the district attorneys cover their services to the United States before the district courts and before the circuit courts of appeals when sitting in their districts<sup>7</sup> and also all services in connection with the procurement of title to sites for public buildings.<sup>8</sup> No

<sup>1</sup> Secs. 767, 769, 1757 Rev. Stat.; act of June 24, 1898, c. 495, secs. 1, 2, 30 Stat. L., 487; Instructions to court officials, 1925, nos. 896-900, 902, and 903.

<sup>2</sup> Act of March 4, 1923, c. 295, 42 Stat. L., 1560.

<sup>3</sup> Act of May 28, 1896, c. 252, 29 Stat. L., 179.

<sup>4</sup> *Ibid.*, sec. 7, p. 180.

<sup>5</sup> *Ibid.*, sec. 6, p. 179.

<sup>6</sup> *Ibid.*, sec. 17, p. 183.

<sup>7</sup> *Ibid.*, sec. 6, p. 179.

<sup>8</sup> Act of March 2, 1889, c. 411, sec. 1, 25 Stat. L., 941; Instructions, 1925, no. 909.

district attorney may receive any "fees of office" in addition to the salary allowed by law<sup>8</sup> and paid monthly by the marshals.<sup>9</sup>

Section 843 of the Revised Statutes, although no longer followed, has never been repealed; it requires that the personal compensation of district attorneys must be made only from the fees of their respective offices for each calendar year.<sup>10</sup>

There are two classes of assistant district attorneys, "regular" and "special." The law also provides for clerical assistants.

The regular assistant district attorneys are provided for annually in the Department of Justice appropriation act under the head of "Pay of regular Assistant Attorneys, United States courts." They are appointed and removable at will by the Attorney General, must take the prescribed oath, and reside at places designated by the Attorney General.<sup>11</sup> As a prerequisite to the appointment of a regular assistant district attorney, the judge of the district court in which the assistant is to serve must give a certificate in writing that such appointment is necessary.<sup>12</sup> The Attorney General fixes the salaries of the regular assistants, not to exceed \$3500 a year.<sup>13</sup> Regular assistant attorneys must be residents of the districts for which they are appointed.<sup>14</sup> Exceptions to the above maximum salary are made in the cases of the southern district of New York and the northern district of Illinois, and the first assistant in the eastern district of Pennsylvania and in the District of Columbia.<sup>15</sup> The regular assistant attorneys are usually young lawyers, who obtain considerable prestige by this employment, but hold office for only a short time. The salary of a regular assistant is now usually between \$2000 and \$3000.<sup>16</sup> During 1925, 326 regular assistants were employed at an average annual salary of \$2869.<sup>17</sup>

<sup>8</sup> Act of March 3, 1905, c. 1483, sec. 1, 33 Stat. L., 1207.

<sup>9</sup> Acts: May 28, 1896, c. 252, sec. 16, 29 Stat. L., 183; August 1, 1914, c. 223, sec. 1, 38 Stat. L., 653.

<sup>10</sup> See note to sec. 1413, Compiled Statutes (1918) and 4 Fed. Stat. Ann., 125; Instructions, 1925, nos. 904-9; also House Hearings on Department of Justice appropriation bill, 1926, p. 9.

<sup>11</sup> Instructions, 1925, nos. 910-16.

<sup>12</sup> Act of May 28, 1896, c. 252, sec. 8, 29 Stat. L., 181.

<sup>13</sup> Act of May 28, 1924, c. 204, 43 Stat. L., 220.

<sup>14</sup> Act of May 28, 1896, c. 252, sec. 8, 29 Stat. L., 181.

<sup>15</sup> *Ibid.*, sec. 24, p. 186; acts: March 4, 1907, c. 2918, 34 Stat. L., 1360; May 27, 1908, c. 200, 35 Stat. L., 375; July 19, 1919, c. 24, sec. 1, 41 Stat. L., 209.

<sup>16</sup> House Hearings, 1925, p. 240.

<sup>17</sup> *Ibid.*, 1927, pp. 254-57.



Special<sup>28</sup> assistant district attorneys are appointed by the Attorney General. The law provides that he may employ such attorneys and counsellors at law as he may deem necessary to assist the district attorneys. He is authorized to stipulate with them the amount of their compensation, and no limit is placed on the amount he may stipulate.<sup>29</sup> Such special assistant attorneys are required to be formally commissioned either as Special Assistant Attorneys General or as special assistant district attorneys.<sup>30</sup> The Attorney General is required to certify in writing that their services were actually rendered and could not have been rendered by a regular employee of the Department of Justice.<sup>31</sup> Their contracts with the government must stipulate their personal compensation and whatever arrangements are to be made about expenses.<sup>32</sup> Their salaries are paid directly from the Department of Justice, and not usually by the district marshals.<sup>33</sup> There are three methods of payment of special assistants. One is to stipulate a certain per diem, which is usually between \$25 and \$100, compensation covering both service and expenses. There is usually, however, a clause preventing more than \$1000 compensation in any one month.<sup>34</sup> Some special assistants are paid a fixed sum for a certain case or group of cases. In one case this amounted to \$25,000. Otherwise, the maximum has been \$12,000<sup>35</sup> and it is usually much less.<sup>36</sup> The third method is to stipulate an annual salary and expenses incurred, and to pay compensation on that basis whether the employment is for more or less than a year.<sup>37</sup> The appropriation acts now limit the maximum salary of special assistants to \$10,000.<sup>38</sup>

Most of the special assistant attorneys are provided for in the annual Department of Justice appropriation act, under the head, "Pay of Special Assistant Attorneys, United States courts."

<sup>28</sup> Instructions, 1925, nos. 917-25.

<sup>29</sup> Sec. 363, Rev. Stat.

<sup>30</sup> Sec. 366, Rev. Stat.

<sup>31</sup> Sec. 365, Rev. Stat.; *United States, v. Crosthwaite*, 168 U. S. 375 (1897).

<sup>32</sup> *Townsend v. United States*,<sup>22</sup> Ct. Cl. 208 (1887); Attorney General, Annual Report, 1924, p. 310.

<sup>33</sup> Act of August 1, 1914, c. 223, sec. 1, 38 Stat. L., 653; Instructions, 1925, no. 920.

<sup>34</sup> House Hearings, 1925, p. 253.

<sup>35</sup> *Ibid.*, p. 263.

<sup>36</sup> *Ibid.*, p. 265ff.

<sup>37</sup> *Ibid.*, pp. 252, 265 ff. Attorney General, Annual Report, 1925, pp. 325 ff.

<sup>38</sup> Act of April 29, 1926, c. 195, Title II, 44 Stat. L., 346.

Some, however, are also paid from appropriations for "Enforcement of anti-trust laws," and "Investigation and prosecution of war frauds."

Mention might well be made here of the distinction between Special Assistant Attorneys General and special assistant district attorneys. The latter are appointed to assist a district attorney in the prosecution of a particularly important case or class of cases within a particular district.<sup>30</sup> The former are appointed to handle a class of cases extending into two or more districts,<sup>31</sup> or to head a division in the Department of Justice handling a particular class of cases arising as a result of special circumstances, such as patent cases arising out of the World War.<sup>32</sup> Special assistants may not be employed to perform the regular duties of district attorneys;<sup>33</sup> although the appropriation acts and practical necessity force recourse to subterfuge in some cases in which special assistants are employed to do, in fact, the duties that would ordinarily be done by regular assistants if the appropriation acts permitted their employment.<sup>34</sup> Another vital distinction between regular and special assistants is that the former, like district attorneys, can go before grand juries in any cases; while the latter cannot go before grand juries without a special appointment from the Attorney General authorizing them in the particular case to attend to grand jury matters. If they do not have the necessary special appointments, the action of the grand jury may be quashed.<sup>35</sup>

Besides assistant attorneys, district attorneys are allowed necessary clerical assistance.<sup>36</sup> It is necessary that the judge of the court in which the attorney serves first certify as to the necessity for clerical assistance. Then with the approval of the Attorney General and only for the period that such approval lasts, the

<sup>30</sup> Instructions, 1925, no. 917.

<sup>31</sup> House Hearings, 1925, p. 291.

<sup>32</sup> *Ibid.*, p. 243; *Ibid.*, 1927, pp. 1, 252 ff.

<sup>33</sup> Instructions, 1925, no. 918; 4 Comptrollers' Decisions, 490, in which it was decided that the Attorney General could not appoint a special assistant at a rate of pay greater than allowed for regular assistant district attorney to perform, in case of illness of the district attorney, the regular duties of the latter office.

<sup>34</sup> House Hearings, 1925, pp. 239, 284.

<sup>35</sup> *Ibid.*, p. 239; also *Ibid.*, 1926, p. 12; act of June 30, 1906, c. 3935, 34 Stat. L., 816.

<sup>36</sup> Instructions, 1925, nos. 926-35.

district attorneys may employ clerks. The salaries are fixed from time to time by the Attorney General.<sup>37</sup> One clerk may be appointed by each district attorney without regard to the Civil Service limitations. Additional clerks, however, must be selected from the eligible list of the Civil Service Commission. Clerks, other than those appointed under the Civil Service, hold office during the pleasure of the district attorney who appoints them and of the Attorney General. The terms of clerks appointed by a district attorney end with his retirement, although allowance is made for services of clerks rendered in good faith during a vacancy in the office of a district attorney.<sup>38</sup> Provision is also made in the annual appropriation acts for clerical assistance to special assistant attorneys. The salaries of clerks range from \$550 to \$3150; the great majority, however, receive from \$1000 to \$2000.<sup>39</sup>

The Attorney General fixes the place of official residence of the district attorneys and their regular assistants.<sup>40</sup> In districts where there is more than one district judge, a regular assistant district attorney is usually attached to the court of such a second judge.<sup>41</sup> District attorneys must reside permanently within the districts in which they serve and give their personal attention to their duties.<sup>42</sup>

The expenses of district attorneys fall into three categories: traveling, office, and miscellaneous.<sup>43</sup>

Traveling expenses are provided for under the head "Salaries and expenses of District Attorneys, United States courts."<sup>44</sup> District attorneys and their assistants are allowed necessary expenses for lodging and subsistence not to exceed six dollars a day and actual and necessary traveling expenses while absent from their official residence and necessarily employed in going to, returning from, and attending before any United States court, commissioner, or other committing magistrate, and while otherwise necessarily absent from their official residence on official business. If a district attorney is to travel outside his district, permission in advance

<sup>37</sup> Act of May 28, 1896, c. 252, sec. 15, 29 Stat. L., 183.

<sup>38</sup> Instructions, 1925, no. 934.

<sup>39</sup> House Hearings, 1925, p. 234.

<sup>40</sup> Act of May 28, 1896, c. 252, sec. 8, 29 Stat. L., 181.

<sup>41</sup> House Hearings, 1925, p. 239.

<sup>42</sup> Act of June 20, 1874, c. 328, sec. 2, 18 Stat. L., 109. Instructions, 1925, nos. 901 and 915.

<sup>43</sup> Instructions, 1925, nos. 936-78.

<sup>44</sup> *Ibid.*, no. 945.

must be obtained from the Attorney General. In case of emergency, however, a district attorney may be called upon to make a trip without such previous authorization, and his expenses will usually be allowed. If the attendance of a clerk to a district attorney before a court is necessary, authorization for the necessary traveling expenses must be obtained in advance. The actual allowance of per diems is regulated by regulations of the Attorney General as approved by the President and enforced by the Comptroller General."

The necessary office expenses of district attorneys are allowed by the Attorney General. Before incurring any office expenses the district attorney must get authorization from the Attorney General. Messengers, which constitute an office expense, must be employed from the Civil Service."

Expenses, other than for travel and office, incurred by the district attorneys are paid from the appropriation, "Miscellaneous expenses, United States courts."

Stenographic services are provided under contract. Bids are received in each district in June and contracts awarded by the Department of Justice. Notwithstanding the contract, authorization for the use of stenographers in each case should be obtained in advance." It is not necessary, however, to get this previous authorization. The general duties of district attorneys under Section 771, Revised Statutes, permits them to hire stenographers." The rate paid to these temporary stenographers is from five to twenty cents a folio or five to ten dollars a day.

When a district attorney foresees that he is going to need an interpreter at a forthcoming term, he is required to send the facts to the Attorney General for his authorization in advance. District attorneys are enjoined to have the cases where the services of interpreters are required called at the beginning of the court term; and, if there is more than one case in the district, to have

"Sec. 370, Rev. Stat.; acts: February 22, 1875, c. 95, sec. 7, 18 Stat. L., 334; May 28, 1896, c. 252, sec. 8, 29 Stat. L., 181; May 27, 1908, c. 200, sec. 1, 35 Stat. L., 375; June 3, 1926, c. 457, 44 Stat. L., 688. Instructions, 1925, nos. 945-51. *United States v. Fleming*, 80 Fed. 372 (1897).

"Acts: May 28, 1896, c. 252, sec. 14, 29 Stat. L., 183; June 30, 1906, c. 3914, 34 Stat. L., 754; Instructions, 1925, nos. 936-40, and 952.

"Instructions, 1925, no. 953.

"*Ibid.*, nos. 957-60.

"*Fish v. United States*, 36 Fed. 677 (1888).

them disposed of consecutively. Interpreters are paid \$2.50 to ten dollars a day. They are not allowed to receive witness fees.<sup>60</sup>

Title abstractors and experts, such as accountants, physicians, real estate experts, handwriting experts, and engineers, may be employed by the district attorneys in important cases when authorized in advance by the Attorney General. The district attorneys are enjoined to familiarize themselves, as far as practical by inquiry, and if necessary by advertisement, with experts whose services are likely to be needed from time to time, in order to avoid being dependent upon a single individual and subject to his demands for compensation at a time when the government must have such service. Experts in cases under the pure-food acts are paid by the Department of Agriculture; and the district attorney must communicate with that department when such services are necessary. Abstractors are usually contracted for by the year as the result of formal bids. Experts receive fees ranging usually from five to fifty dollars per day; although some expert fees are as high as one hundred dollars per day. They must not receive any fees of other witnesses.<sup>61</sup>

The Attorney General is given general supervisory powers over the accounts of district attorneys and their assistants.<sup>62</sup> The accounts are sent to the Department of Justice, where they are examined under the supervision of the Attorney General before being transmitted, as approved by him, to the General Accounting Office.<sup>63</sup> The accounts of district attorneys, before their transmittal to the Department of Justice, must be verified on oath and examined in court by the district judge of the district for which the district attorney was appointed.<sup>64</sup> The accounts are transmitted to the Department by the court clerks.<sup>65</sup> They include only expenses. Fees formerly charged to private litigants and paid to the district attorneys still form a part of the judgment

<sup>60</sup> Instructions, 1925, nos. 961-64.

<sup>61</sup> Instructions, 1925, nos. 965-76.

<sup>62</sup> Sec. 368, Rev. Stat.

<sup>63</sup> Act of July 31, 1894, c. 174, sec. 13, 28 Stat. L., 210.

<sup>64</sup> Sec. 370, Rev. Stat.; sec. 846, Rev. Stat., as amended by act of February 18, 1875, c. 80, sec. 1, 18 Stat. L., 318; acts: February 22, 1875, c. 95, sec. 1, 18 Stat. L., 333; May 28, 1896, c. 252, sec. 13, 29 Stat. L., 183, May 27, 1908, c. 200, sec. 1, 35 Stat. L., 375.

<sup>65</sup> Act of February 22, 1875, c. 95, sec. 1, 18 Stat. L., 333; Instructions, 1925, no. 1348.

in the case, but they are now paid to the clerk of the court and by him covered into the Treasury.<sup>62</sup> The office and miscellaneous expenses of the district attorneys and their assistants are made out quarterly and accounts for lodging, subsistence, and travel, monthly, in accordance with rules prescribed by the Attorney General.<sup>63</sup> The district courts of the United States may issue writs of *mandamus* to compel the attorneys to make proper returns.<sup>64</sup> Under the head of "Examination of judicial officers," a sum of money is annually appropriated to enable the Bureau of Accounts of the Department of Justice to send examiners to investigate the accounts of district attorneys.<sup>65</sup>

**Duties.** In each judicial district of the United States a meet person learned in the law is appointed to act as attorney for the United States.<sup>66</sup> The United States can appear as plaintiff in court only by a district attorney or other law officer of the government and the record must so show.<sup>67</sup> It is the duty of every district attorney to prosecute in his district all delinquents for crimes and offenses cognizable under the authority of the United States and all civil actions in which the United States is concerned.<sup>68</sup> The United States is concerned not only in suits in which they appear by name, but also in suits in which an officer of the United States is involved.<sup>69</sup> "To prosecute civil actions" is not to be interpreted too literally; it is to be taken to mean the prosecution or defense of any actions in which the United States is interested.<sup>70</sup> It has been decided, however, that, under this section, a district attorney is not required to advise or defend a board of immigration sitting in his district.<sup>71</sup>

<sup>62</sup> Sec. 983, Rev. Stat.; act of May 28, 1896, c. 252, sec. 6, 29 Stat. L., 179.

<sup>63</sup> Acts: May 27, 1908, c. 200, sec. 1, 35 Stat. L., 375; December 14, 1877, c. 1, 20 Stat. L., 7; May 28, 1896, c. 252, sec. 13, 29 Stat. L., 183.

<sup>64</sup> Act of February 22, 1875, c. 95, sec. 4, 18 Stat. L., 333.

<sup>65</sup> House Hearings, 1926, p. 75; 1927, p. 112ff.

<sup>66</sup> Sec. 767, Rev. Stat.

<sup>67</sup> *United States v. Doughty*, 25 Fed. Cas. no. 14,986 (1870); secs. 359, 360, Rev. Stat. act of June 30, 1906, c. 3935, 34 Stat. L., 816.

<sup>68</sup> Sec. 771, Rev. Stat.

<sup>69</sup> 8 Op. 399.

<sup>70</sup> *United States v. Smith*, 158 U. S. 346 (1894); *Helborn v. United States*, 163 U. S. 342 (1895); *McPherson v. United States*, 245 Fed. 35, 157 C. C. A. 331, (1917).

<sup>71</sup> 18 Op. 108.

The Attorney General exercises general superintendence and direction over the district attorneys and marshals in all the districts of the United States and its territories as to the manner of discharging their duties. The district attorneys must report to the Attorney General in such manner as he directs.<sup>66</sup> The Attorney General may order the district attorneys to appear in a case in which the United States is interested in the circuit courts of appeals;<sup>67</sup> and, as we have seen, his compensation covers this duty. "General superintendence" does not permit the Attorney General to control the action of district attorneys in criminal cases by general regulation; although he may direct the district attorneys to any extent in the manner of discharging their duties in any particular case.<sup>68</sup> Under this section, however, the Attorney General has prescribed the organization and conduct of the offices of the district attorneys.<sup>69</sup> They are required to keep complete files of all their correspondence and of the records of all cases which are conducted by their offices.<sup>70</sup> They are furnished by the Department of Justice with the following dockets which must be kept in accordance with the rules prescribed by the Attorney General: Register of Complaints, Grand Jury Docket, Criminal Docket, Civil Docket, and Witness Docket. These dockets must be kept up to date.<sup>71</sup> The district attorneys must transmit to the Department of Justice on a prescribed form at the end of each month, a report containing the status of each case in his district, whether tried by himself or by special counsel, to which the United States is a party and which had not been terminated before the last report. The report contains all docket entries made in each case from the date of institution of the suit to the day of the report.<sup>72</sup> Seven or eight copies of these monthly reports are made out, and five are sent to the Department of Justice.

District attorneys are carefully instructed by the Attorney General in the handling of cases arising under the various laws

<sup>66</sup> Sec. 362, Rev. Stat.

<sup>67</sup> *Garter v. United States*, 170 U. S. 527 (1897).

<sup>68</sup> *Fish v. United States*, 36 Fed. 680 (1888).

<sup>69</sup> Instructions, 1925, nos. 979-1038.

<sup>70</sup> *Ibid.*, nos. 979-84.

<sup>71</sup> *Ibid.*, nos. 985-91, Department of Justice, Circular Letter no. 1457.

<sup>72</sup> Instructions, 1925, nos. 992-1007.

and on appeal.<sup>73</sup> They are required to get authorization from the Department of Justice before dismissing criminal cases. In no case, however, must a district attorney dismiss a case instituted by direction from the Department of Justice or in which some other executive department is interested without previous authorization from the Attorney General.<sup>74</sup> The district attorneys must watch the sureties on bail bonds carefully and push the collection of fines, penalties, and forfeitures vigorously.<sup>75</sup> They must scrutinize carefully the accounts of commissioners submitted to the court for approval.<sup>76</sup> They must use as few witnesses as possible, dismiss witnesses as soon as possible, and find out in advance if witnesses will be useful.<sup>77</sup> They are instructed to supervise generally governmental concerns in their districts and keep the proper officers of the Department of Justice informed as to any infringements of law or other matters that might require court action.

District attorneys are still permitted to engage in private practice,<sup>78</sup> but the Attorney General, prescribes rules to prevent any undesirable official conduct on their part. They are required to maintain reasonable office hours in their public offices; they must not transact private business in public offices, and they must not print their official title on private business cards or use it in advertisements and must not accept employment as defense counsel in criminal cases in the state courts.<sup>79</sup> The question naturally arises, "What would prevent a district attorney from taking a case against the government?" As long as he retains his position as district attorney, he cannot appear in a case on the side adverse to the government; but there is nothing except professional ethics, if there is even that, to prevent a district attorney from resigning to take up immediately a criminal case against the government. There is a criminal penalty levied against any one in the employ of the United States who acts as an attorney or agent of anyone prosecuting a claim against the United States. This would prevent a district attorney while he yet retained his position from taking

<sup>73</sup> *Ibid.*, nos. 1044 and 1070-1144. See also act of March 3, 1887, c. 359, sec. 10, 24 Stat. L., 507.

<sup>74</sup> Instructions, 1925, no. 1059.

<sup>75</sup> *Ibid.*, nos. 1046-52.

<sup>76</sup> *Ibid.*, nos. 941-44.

<sup>77</sup> *Ibid.*, nos. 1053-58.

<sup>78</sup> House Hearings, 1926, p. 8.

<sup>79</sup> Instructions, 1925, no. 1045.



a case in claims against the government.<sup>60</sup> Nor may a district attorney prosecute a case in claims within two years after his term of office.<sup>61</sup> If a district attorney fails to give his personal attention to his duties, his office is deemed vacant. Since a district attorney could not give his personal attention to both sides in a criminal case, if he were retained by a defendant, his office would probably become immediately vacant.<sup>62</sup>

Power is given the Attorney General to direct any officer of the Department of Justice to conduct any proceedings in which the United States is interested;<sup>63</sup> but the district attorneys have the exclusive power to initiate proceedings before a grand jury.<sup>64</sup>

There is authority in the law for control of the conduct of the district attorneys by officers of the government other than the Attorney General. The district attorneys are required to report to the Solicitor of the Treasury when they institute a suit for a fine, penalty, or forfeiture.<sup>65</sup> The Solicitor has power to instruct district attorneys, marshals, and clerks in all matters and proceedings appertaining to suits in which the United States is a party or interested, except suits under the internal revenue laws, and to cause the district attorneys to make to him such reports as he requires.<sup>66</sup> with the approval of the Attorney General.<sup>67</sup> District attorneys conduct some of the suits arising under the national bank law under

<sup>60</sup> Sec. 5498, Rev. Stat., as amended by Crim. Cod., sec. 109, 35 Stat. L., 1107.

<sup>61</sup> Sec. 190, Rev. Stat.

<sup>62</sup> Act of June 20, 1874, c. 328, sec. 2, 18 Stat. L., 109. See *Gaulden v. State*, 11 Ga. 47 (1851) in which it was held no error for a court to forbid an attorney who as Solicitor General had drawn an indictment to defend the criminal after the expiration of his term of office. See also, *Wilson v. State*, 16 Ind. 392 (1860), *In re Cowdery*, 69 Calif. 32, 10 Pac. 47, 58 Am. Rep. 545 (1886). In *People v. Spencer*, 61 Calif. 128 (1882), an attorney was suspended from practise for moving the discharge of an indictment which he, as district attorney, had drawn. In *People v. Johnson*, 40 Colo. 460, 90 Pac. 1038 (1907), it was held no ground for disbarment for an attorney to appear as counsel for the defense in a case which as district attorney he had begun to prosecute. Cases collected in *Costigan, Cases on Legal Ethics*.

<sup>63</sup> Secs. 359, 367, Rev. Stat.

<sup>64</sup> *United States v. Rosenthal*, 121 Fed. 862 (1903), House Hearings, 1925, p. 239.

<sup>65</sup> Sec. 772, Rev. Stat.

<sup>66</sup> Sec. 379, Rev. Stat.

<sup>67</sup> Sec. 773, Rev. Stat., as amended by act of April 9, 1910, c. 152, 36 Stat. L., 294.

the direction of the Solicitor, although the Admiralty Division now has charge of national bank cases.<sup>88</sup> The Solicitor also has authority, with the approval of the Attorney General, to make regulations relating to the collection of revenues and debts due to the United States.<sup>89</sup> This is a survival from the period—before 1870—when the Solicitor was an autonomous law officer.

The Secretary of the Treasury and the Secretary of the Navy have some control over the district attorney. The district attorneys cannot enter a discontinuance of *nolle prosequi* in any criminal proceedings under the internal revenue laws without the permission of both the Attorney General and the Secretary of the Treasury.<sup>90</sup> The Secretary of the Treasury, too, may instruct the district attorneys in the defense of suits against collectors or other officers of the revenue.<sup>91</sup> When a district attorney thinks that actions cannot be sustained in customs matters, he is subject to the direction, not of the Attorney General but of the Secretary of the Treasury. The latter officer allows the expenses of the district attorneys incurred in conducting suits for fines and penalties under the customs and internal revenue laws.<sup>92</sup> In case of claims due to the United States, if the district attorney thinks they ought to be compromised, he must advise and be directed by the Secretary of the Treasury. Again, the district attorneys are required to report quarterly to the Secretary of the Navy in matters respecting prizes, in such manner as that Secretary may require.<sup>93</sup>

In the case of actions under the internal revenue laws, the Commissioner of Internal Revenue takes the place of the Secretary of the Treasury and exercises extensive control over the district attorneys. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, neither of whom need be lawyers, may establish rules for the observance of district attorneys and marshals, governing their conducts of suits under the internal revenue laws.<sup>94</sup> When a district attorney thinks it unwise or futile to prosecute a case under the internal revenue laws,

<sup>88</sup> Sec. 380, Rev. Stat.

<sup>89</sup> Sec. 377, Rev. Stat.

<sup>90</sup> Sec. 3230, Rev. Stat.

<sup>91</sup> Sec. 771, Rev. Stat.

<sup>92</sup> Sec. 3085, Rev. Stat. and sec. 838, Rev. Stat., as amended by act of February 27, 1877, c. 69, sec. 1, 19 Stat. L., 241.

<sup>93</sup> Sec. 4619, Rev. Stat.

<sup>94</sup> Sec. 3215, Rev. Stat.

he is required to report to the Commissioner and follow his direction.<sup>85</sup> District Attorneys are required to make a report of each suit under the internal revenue laws or against an internal revenue officer as soon as it is instituted, and a report at the end of a court term covering the actions taken on such suits during the term.<sup>86</sup> The control by departments other than the Department of Justice has, in recent years, been considerably negated. No reports are, in fact, made to the Commissioner of Internal Revenue. He gets as his report one of the five monthly reports sent by the district attorneys to the Department of Justice. The direction of district attorneys exercised by the Commissioner of Internal Revenue usually takes the form of answers to letters requesting information. Although most district attorneys appear ignorant of its existence, the code of rules contemplated by the law exists.<sup>87</sup> It appears that the Post Office Department once tried to exercise control over the district attorneys in suits under the postal laws, but Congress intervened.<sup>88</sup>

In cases of obstruction to navigation, the Secretary of War reports violations of the law to the Attorney General, under whose supervision the district attorneys prosecute the cases and to whom they report their conduct of the cases. The Attorney General is required to send transcripts of such reports to the Secretary of War.<sup>89</sup>

With the substantive law that the district attorneys enforce, it is impossible to deal in a treatise such as this. Congress does not seem to have been satisfied with the general provision that it has enacted regarding the duties of district attorneys. In nearly every law that may give rise to legal actions, one section is devoted to the duties of district attorneys. The undesirability of this procedure and its results will be discussed elsewhere.

Whatever interference with his exclusive control the law theoretically permits, the Attorney General recognizes no such authority in fact. United States marshals as well as district attorneys will accept directions as to the discharge of their official duties, includ-

<sup>85</sup> Sec. 838, Rev. Stat., as amended by act of February 27, 1877, c. 69, sec. 1, 19 Stat. L., 241.

<sup>86</sup> Sec. 774, Rev. Stat.

<sup>87</sup> Treasury Department, Regulation no. 12, revised October 1, 1920.

<sup>88</sup> Secs. 381 and 775, Rev. Stat.

<sup>89</sup> Act of March 3, 1899, c. 425, sec. 17, 30 Stat. L., 1153.

ing the maintenance of books and records, the handling of government and trust funds, and the preparation of accounts, only from the Attorney General or his duly authorized representatives.<sup>100</sup>

**Territorial District Attorneys.** Each territory, except as indicated below, has a district attorney appointed for four years by the President and confirmed by the Senate.<sup>101</sup> There is also a District Attorney for the Panama Canal Zone, who is also legal advisor of the Governor.<sup>102</sup> The duties of the District Attorney for Porto Rico are the same as those of any other district attorney.<sup>103</sup> The district attorney for Hawaii is appointed for six years.<sup>104</sup> In Alaska there is a district attorney for each of the four divisions of the court. Each resides at a place designated by the Attorney General in his district, and each performs under the supervision of the Attorney General, the usual duties of a district attorney.<sup>105</sup>

<sup>100</sup> Instructions, 1925, no. 203. See also nos. 202, 1039, 1040, 1043, 1044 (e), and 1114. Compare, however, Attorney General, Annual Report, 1926, p. 97.

<sup>101</sup> Secs. 1875 and 1877, Rev. Stat.

<sup>102</sup> Act of August 24, 1912, c. 390, sec. 8, 37 Stat. L., 565.

<sup>103</sup> Acts: April 12, 1900, c. 191, sec. 36, 31 Stat. L., 85; March 2, 1917, c. 145, sec. 46, 39 Stat. L., 966.

<sup>104</sup> Act of April 30, 1900, c. 339, 31 Stat. L., 158; sec. 86, as amended by act of March 3, 1909, c. 269, 35 Stat. L., 838; sec. 92, p. 159, as amended by act of May 27, 1910, c. 258, sec. 8, 36 Stat. L., 448.

<sup>105</sup> Act of June 6, 1900, c. 786, 31 Stat. L., 324, sec. 8, as amended by act of March 3, 1909, c. 269, sec. 4, 35 Stat. L., 841; act of March 4, 1923, c. 295, 42 Stat. L., 1560; House Hearings, 1926, p. 9.

## CHAPTER VII

### UNITED STATES MARSHALS

A United States Marshal<sup>1</sup> is appointed for each judicial district of the United States by the President, by and with the advice and consent of the Senate, for a term of four years or until his successor is appointed.<sup>2</sup> The Marshal of the Supreme Court is appointed by the court for a term of four years.<sup>3</sup> Each circuit court of appeals is served by the marshal of the district in which it is sitting.<sup>4</sup> In case of vacancy in the office of marshal, the district judge is authorized to fill it temporarily.<sup>5</sup> Such temporary marshals must execute bond.<sup>6</sup>

The salary of the Marshal of the Supreme Court is fixed at \$4500.<sup>7</sup> Before 1896 marshals were compensated with fees. Fees are still charged to private litigants, but, with the exception of those earned by the field deputies, they are now paid into the Treasury of the United States. The salary of each marshal, until quite recently, was fixed by law.<sup>8</sup> In 1923, however, the specific provisions for salaries were repealed and the Attorney General was authorized to fix them within the limits of \$3000 and \$6500, and upon investigation to readjust the salaries so fixed, but not oftener than once every four years.<sup>9</sup> These salaries are paid monthly from the funds allotted to the Department of Justice.<sup>10</sup>

<sup>1</sup> Instructions to court officials, 1925, nos. 180-84, 199-201.

<sup>2</sup> Secs. 776, 779, Rev. Stat.; act of June 24, 1898, c. 495, sec. 1, 30 Stat. L., 487.

<sup>3</sup> Secs. 677, 779, Rev. Stat.

<sup>4</sup> Jud. Cod., sec. 123; act of March 3, 1911, c. 231, 36 Stat. L., 1087.

<sup>5</sup> Act of June 24, 1898, c. 495, sec. 2, 30 Stat. L., 487.

<sup>6</sup> Sec 793, Rev. Stat.

<sup>7</sup> Jud. Cod., sec. 224, sec. 680, Rev. Stat.

<sup>8</sup> Act of May 28, 1896, c. 252, secs. 6 and 9, 29 Stat. L., 179, 181.

<sup>9</sup> Act of March 4, 1923, c. 295, 42 Stat. L., 1560; Instructions, nos. 215-16.

<sup>10</sup> Act of May 28, 1896, c. 252, sec. 16, 29 Stat. L., 183. Sec. 843, Rev. Stat., provides that the personal compensation of marshals shall be allowed from the fees of the office for each calendar year, and not otherwise. This section has never been specifically repealed.

The sureties on the official bonds of marshals must be approved by the judge of the court in which they serve. Every marshal, before he assumes office, must give a bond to the United States in a sum of \$20,000.<sup>11</sup> When, however, the business of the court requires, the Attorney General may fix the amount of bond up to \$40,000,<sup>12</sup> and in the southern district of New York up to \$75,000.<sup>13</sup> Bonds of marshals are filed in the office of the clerk of the district court in which they serve<sup>14</sup> and a copy thereof is sent to the General Accounting Office.<sup>15</sup> Officers who take and approve bonds must cause them to be examined every two years.<sup>16</sup> Bonds must be renewed every four years; but in the case of marshals, since they are appointed for four years or until their successors qualify, if their term runs a little over that period the requirement for the renewal of bond is waived.<sup>17</sup> Reappointment has the effect of a new appointment, necessitating a new bond.<sup>18</sup>

**Duties.** The powers and duties of marshals and their deputies are those of an exalted policeman.<sup>19</sup> Marshals and their deputies in each state have the same powers in executing the laws of the United States as sheriffs have in executing the laws of a state.<sup>20</sup> Marshals are required to report to the Department of Justice any actual or anticipated defiance of federal authority.<sup>21</sup> Their duties are to execute the warrants and judgments of the courts in which they serve.<sup>22</sup> The jurisdiction of a marshal, in the execution of process, is limited to his district. In his district, he executes all process of any courts of the United States; he or his deputy is

<sup>11</sup> Secs. 783, 789, Rev. Stat., Instructions, 1925, nos. 185-88.

<sup>12</sup> Act of February 22, 1875, c. 95, sec. 2, 18 Stat. L., 333, Instructions, 1925, nos. 189-91.

<sup>13</sup> Act of February 26, 1923, c. 112, 42 Stat. L., 1287.

<sup>14</sup> Sec. 783, Rev. Stat.

<sup>15</sup> Instructions, 1925, no. 188.

<sup>16</sup> Act of March 2, 1895, c. 177, sec. 5, 28 Stat. L., 807.

<sup>17</sup> Instructions, 1925, no. 191.

<sup>18</sup> *Ibid.*, nos. 194-98.

<sup>19</sup> *Ibid.*, nos. 202-6.

<sup>20</sup> Sec. 788, Rev. Stat.

<sup>21</sup> Instructions, 1925, no. 205 (b).

<sup>22</sup> Secs. 680 and 787, Rev. Stat.

the only one who may execute judicial process in his district."<sup>22</sup> The Attorney General exercises general superintendence over the exercise of the duties of the marshals, who are required to render to him, as he directs, accounts of their official proceedings and reports on the condition of their offices.<sup>23</sup>

Over the legal matters pertaining to the collection of revenue, the Solicitor of the Treasury has extensive control. Distress warrants issued by him against defaulting collectors of internal revenue are executed by the marshals under whose direction the necessary sales are made and deeds made out. To provide the Solicitor with the requisite information relating both to distress warrants and the revenue generally, the marshals must report, thirty days before the opening of a term of court in their respective districts, the status of processes in their hands for money due the United States. With the approval of the Attorney General, the Solicitor makes regulations to govern the marshals in the collection of revenues and debts due to the United States.<sup>24</sup>

It is the duty of marshals to provide jails for the United States prisoners in their districts. The United States owns few jails in which to detain prisoners awaiting trial or held for short sentences. The state jails are usually opened to the United States under contract made by the Superintendent of Prisons. In each district where there is no state jail available, the marshal, under the direction of the judge, procures temporary accommodations for prisoners.<sup>25</sup> The marshals, finally, supervise the conduct of all federal prisoners out on parole in their districts,<sup>26</sup> and provide guards and supervise the transportation of prisoners to the penitentiaries.<sup>27</sup> The money for the care of prisoners is provided for

<sup>22</sup> *Voss v. Luke*, 1 Cranch (C. C.) 331 (1806); *In re Anderson*, 94 Fed. 487 (1899); *Du Bois v. United States*, 25 Ct. Cl. 195 (1890); *People v. At Teung*, 92 Cal. 421 (1891); *Jobbins v. Montague*, 5 Ben (U. S.) 422, 13 Fed. Cas. 7329 (1871); *J. E. Petty & Co. v. Dock Contractor Co.*, 283 Fed. 341, (1922). *In re Henrick*, 5 Blatch. (U. S.) 414, 11 Fed. Cas. 6369 (1867), however, decided that a warrant issued by a Justice of the Supreme Court to all marshals of the United States, or one issued to a specific marshal to apprehend a person wherever found, could be executed by the marshal outside of his district.

<sup>23</sup> Sec. 362, Rev. Stat.

<sup>24</sup> Secs. 3217, 791, and 377, Rev. Stat.; Instructions, 1925, no. 206 (c).

<sup>25</sup> Secs. 5537, 5538, Rev. Stat.

<sup>26</sup> Act of June 25, 1910, c. 387, sec. 7, 36 Stat. L., 820.

<sup>27</sup> Act of March 3, 1891, c. 529, sec. 5, 26 Stat. L., 839; Instructions, 1925, nos. 612-23, 664-74.

annually in the Department of Justice appropriation act under the head of "Support of prisoners, United States courts."

Money from the funds that are annually placed in the hands of the Attorney General is disbursed in every corner of the world. It has been found both desirable and convenient to use the marshals as disbursing officers of the Department of Justice.<sup>30</sup> Under regulations prescribed by the Attorney General, they pay the salaries of the federal judges, except those regularly holding court in the District of Columbia and retired judges; the salaries and expenses of district attorneys and of their regular assistants, clerks, and messengers; the salaries of the marshals themselves and their deputies;<sup>31</sup> the salaries and expenses of the clerks of court and their deputies;<sup>32</sup> the fees of jurors; witness fees; expenses of prisoners;<sup>33</sup> pay of bailiffs and criers; pay of jury commissioners; miscellaneous expenses of the courts as authorized by the Attorney General; and the rent of and care for the quarters for the courts.<sup>34</sup> Office expenses of marshals are required by law to be approved in advance by the Attorney General.<sup>35</sup>

The marshal is really the administrative officer of the court to which he is attached. He executes its processes and judgments and makes all the necessary arrangements for holding court. He provides court rooms, offices for the judges, and all the necessary supplies and conveniences, such as light, fuel, services, record books, and stationery.<sup>36</sup> All the disbursements of the marshals are, by the plain intent of the law, placed under the supervision and control of the Attorney General. In the performance of these duties the marshals come into close contact with the courts. Occasional decisions of the courts have tended to interfere to some extent with the exclusive control of the Attorney General over the funds placed in the hands of the disbursing officers.<sup>37</sup>

<sup>30</sup> Instructions, 1925, no. 204, and c. ii and v.; act of March 4, 1907, c. 2918, sec. 1, 34 Stat. L., 1360.

<sup>31</sup> Acts: August 1, 1914, c. 223, sec. 1, 38 Stat. L., 653; May 28, 1896, c. 252, sec. 13, 29 Stat. L., 183.

<sup>32</sup> Act of February 26, 1919, c. 49, secs. 6, 7 and 8, 40 Stat. L., 1182.

<sup>33</sup> Secs. 855, 5545, Rev. Stat.

<sup>34</sup> Jud. Cod., sec. 127.

<sup>35</sup> Act of May 28, 1896, c. 252, sec. 14, 29 Stat. L., 183.

<sup>36</sup> Secs. 680, 830, Rev. Stat. and Jud. Cod., secs. 127, 224.

<sup>37</sup> See notes to sec. 830, Rev. Stat. in 4 Fed. Stat. Ann., 119, particularly the case of *United States v. Hillyer*, 1 Alaska 47 (1892).



**Deputies.** Marshals employ two kinds of deputies, field or fee deputies and office or salaried deputies. The field deputies are employees not of the United States but of the marshals.<sup>77</sup> For the appointment of office deputies and clerical assistants, the marshals must have the previous authorization of the Attorney General.<sup>78</sup> Marshals must appoint their office deputies from the classified Civil Service or require them to give bond.<sup>79</sup> The Attorney General fixes the salaries of office deputies and clerical assistants. In serving process, an office deputy receives actual expenses only, or an allowance in lieu thereof fixed by law, and no other fees.<sup>80</sup> Office deputies may be removed by the courts at pleasure, although a court seldom exercises this right.<sup>81</sup> They hold office during the incumbency of their principal or, in case of his death, until his successor is appointed.<sup>82</sup>

Field deputies are appointed with the approval of the Attorney General.<sup>83</sup> From them, the marshal usually requires a bond.<sup>84</sup> They are commonly appointed from among the already existing state police officers, such as sheriffs and constables.<sup>85</sup> They are paid by fees, according to the schedule by which marshals were formerly paid. Their fees and mileage may not exceed \$1500 annually, unless, in the opinion, of the Attorney General an increase to a maximum of \$2500 is required by the public interest; but not in excess of the gross fees (as distinguished from mileage) actually earned. Their appointment must be reported immediately to the Attorney General, and they may be dismissed by the marshals, the courts, or the Attorney General.<sup>86</sup> Their fees chargeable against the United States are paid when the marshals settle their accounts with

<sup>77</sup> *Powell v. United States*, 60 Fed. 687 (1894), rendered before the creation of office deputies.

<sup>78</sup> Act of May 28, 1896, c. 252, sec. 10, 29 Stat. L., 182, as amended by act of February 19, 1909, c. 161, 35 Stat. L., 640, Instructions, 1925, no. 217.

<sup>79</sup> Act of October 22, 1913, c. 32, 38 Stat. L., 208, Instructions, 1925, no. 218.

<sup>80</sup> Act of May 28, 1896, c. 252, sec. 10, 29 Stat. L., 182, as amended by act of February 19, 1909, c. 161, 35 Stat. L., 640.

<sup>81</sup> *Powell v. United States*, 60 Fed. 687 (1894); also sec. 780, Rev. Stat.

<sup>82</sup> Sec. 789, Rev. Stat.

<sup>83</sup> Act of May 28, 1896, c. 252, sec. 11, 29 Stat. L., 182, as amended by act of March 4, 1911, c. 269, 36 Stat. L., 1355.

<sup>84</sup> Act of May 28, 1896, c. 252, sec. 10, 29 Stat. L., 182, as amended by act of February 19, 1909, c. 161, 35 Stat. L., 640. See also *Priddie v. Thompson*, 82 Fed. 186 (1897).

<sup>85</sup> Instructions, 1916, no. 126.

<sup>86</sup> Same as note 44. See also Instructions, 1925, no. 244.

the Treasury." In the Supreme Court, the Marshal with the approval of the Chief Justice, appoints assistants and messengers, who are paid the same salary as similar employees of the House of Representatives.<sup>40</sup> On July 31, 1926, there were 885 salaried deputies receiving an average salary of \$1666.68 and seventeen fee deputies employed in the United States.<sup>41</sup>

**Accounts.** Accounts of marshals are verified and certified in court.<sup>42</sup> After this certification, the account cannot be subsequently reviewed for any fees actually paid to witnesses or jurors, however erroneous such payments may have been. Marshals are, however, required to rectify, if possible, any errors made in fees to jurors or witnesses. The Attorney General is given general supervisory powers over the accounts of marshals,<sup>43</sup> including those of all the various funds which they handle as disbursing officers of the Department of Justice. After examination in the Department, these accounts are transmitted to the General Accounting Office.<sup>44</sup>

Marshals, within thirty days after January first and July first, must make to the Attorney General, on forms prescribed by him, written returns of their fees, emoluments, and expenses for the preceding half year.<sup>45</sup> In accordance with rules and regulations prescribed by the Attorney General, they must make quarterly returns of their office earnings and expenses,<sup>46</sup> and they must account under a special head for matters concerning Post Office revenue cases.<sup>47</sup>

The marshals are, in fact, required to make a general accounting of their offices quarterly to the Attorney General on September thirtieth, December thirty-first, March thirty-first, and June thirtieth.<sup>48</sup> This is a complete accounting, not only of administrative

<sup>40</sup> Sec. 856, Rev. Stat.

<sup>41</sup> Sec. 680, Rev. Stat.

<sup>42</sup> House Hearings, on the Department of Justice appropriation bill, 1927, pp. 242-44. See also Instructions, 1925, 217-44.

<sup>43</sup> Sec. 846, Rev. Stat., as amended by act of February 18, 1875, c. 80, sec. 1, 18 Stat. L., 318; and act of February 22, 1875, c. 95, sec. 1, 18 Stat. L., 333.

<sup>44</sup> Sec. 368, Rev. Stat.

<sup>45</sup> Act of July 31, 1894, c. 174, sec. 13, 28 Stat. L., 210.

<sup>46</sup> Sec. 833, Rev. Stat., and act of June 28, 1902, c. 1301, sec. 1, 32 Stat. L., 475.

<sup>47</sup> Act of May 28, 1896, c. 252, sec. 13, 29 Stat. L., 183.

<sup>48</sup> Sec. 775, Rev. Stat.

<sup>49</sup> Instructions, 1925, no. 440.

expenses and fees but also of their disbursements in behalf of the Department. The Marshal of the Supreme Court, also, must account to the Department of Justice for his fees at the end of each term of court, and pay them into the Treasury." There are a number of miscellaneous provisions of law governing the rendering and supervision of the accounts of marshals that need not be specially noted."

To enforce the rendering of accounts, the district courts are authorized to allow a writ of mandamus to the marshals on the motion of the Attorney General or a district attorney." A criminal penalty is levied against marshals who wilfully fail or neglect to render accounts of their fees." There is annually appropriated for the Department of Justice, a fund for the examination of judicial officers, which title includes marshals.

The Attorney General is authorized to designate the official residence of the marshal in each district at one of the places of holding court in the district."

**Marshals for Special Courts.** While outside the District of Columbia, the Court of Customs Appeals is served by the marshal of the district in which it happens to be sitting. Within the District of Columbia, the court has a marshal of its own with the same powers and duties, wherever applicable, as those of the Marshal of the Supreme Court. The Marshal of the Court of Customs Appeals holds office at the pleasure of the court."

**Territorial Marshals.** A marshal for each territory is appointed by the President and confirmed by the Senate," with the exception that in Alaska a marshal is appointed for each of the four divisions into which the territory is divided." The annual salaries of the Alaskan marshals are fixed at \$4000; the act permitting the Attorney General to fix the salaries of United States marshals

" Sec. 832, Rev. Stat.

" Secs. 775 and 5545, Rev. Stat.; acts: February 22, 1875, c. 95, sec. 7, 18 Stat. L., 334; June 6, 1900, c. 791, sec. 1, 31 Stat. L., 639.

" Act of February 22, 1875, c. 95, sec. 4, 18 Stat. L., 333.

" Act of May 28, 1896, c. 252, sec. 18, 29 Stat. L., 183.

" Act of May 28, 1896, c. 252, sec. 12, 29 Stat. L., 183.

" Jud. Cod., secs. 190, 193.

" Secs. 1876 and 1877, Rev. Stat.; act of August 24, 1912, c. 390, sec. 9, 37 Stat. L., 565.

" Act of March 3, 1909, c. 269, sec. 6, 35 Stat. L., 841.

does not, it appears, apply to Alaska.<sup>46</sup> The Attorney General may require from marshals in Alaska a bond for as high as \$75,000.<sup>47</sup> The Marshal for Hawaii is appointed for a term of six years.<sup>48</sup> With these exceptions, the territorial marshals have the same rights, powers, duties, and general functions as have the United States marshals in the regular federal districts. In addition, when a jail or penitentiary is built in a territory, it is placed in charge of the United States marshal for the district in which it is situated<sup>49</sup> and he is enjoined to execute the rules and regulations made for the government of that penitentiary by the Attorney General.<sup>50</sup> Marshals' communications are not directed exclusively to the Department of Justice; nor are they responsible exclusively to the Attorney General. They report directly to the Secretary of the Navy in prize matters.<sup>51</sup> The Commissioner of Internal Revenue is authorized, with the approval of the Secretary of the Treasury, to prescribe rules to govern marshals in their duties under the internal revenues laws.<sup>52</sup> It is provided that marshals shall report directly to the Comptroller General on forms prescribed by him, all matters concerning his execution of process in connection with money due to the Post Office Department.<sup>53</sup>

<sup>46</sup> Acts: June 6, 1900, c. 786, sec. 10, 31 Stat. L., 325; March 4, 1923, c. 295, 42 Stat. L., 1560; April 29, 1926, c. 195, Title II, 44 Stat. L., 341.

<sup>47</sup> Act of March 3, 1899, c. 429, sec. 459, 30 Stat. L., 1336, as amended by act of January 22, 1902, c. 3, 32 Stat. L., 2.

<sup>48</sup> Act of April 30, 1900, c. 339, sec. 86, 31 Stat. L., 158 as amended by act of March 3, 1909, c. 269, sec. 1, 35 Stat. L., 838.

<sup>49</sup> Acts: June 6, 1900, c. 786, secs. 9, 31, 31 Stat. L., 324, 332; sec. 1892, Rev. Stat.

<sup>50</sup> Sec. 1893, Rev. Stat.

<sup>51</sup> Sec. 4623, Rev. Stat.

<sup>52</sup> Sec. 3215, Rev. Stat.

<sup>53</sup> Sec. 792, Rev. Stat.

## CHAPTER VIII

### CLERKS OF THE FEDERAL COURTS

Corpus Juris defines a "clerk of court" as, "an officer of a court of justice who has charge of the clerical part of its business, who keeps its records and seal, issues process, enters judgments and orders, gives certified copies from the records, etc. The office of a clerk of court, although sometimes endowed with certain judicial attributes, is essentially ministerial and is in no way necessary to the existence of a court. That is, while the clerk is an officer of the court and an 'officer of the law,' he is not a judicial officer, nor is he the court." With the general duties of the clerks of the federal courts as officers of the law, this study has nothing to do. However important may be a complete study of the duties and functions of the clerk, and however much the lack of such a study may be felt by the student of the administration of justice, it is necessary to confine the discussion in this chapter to the clerks' relations to the Department of Justice.

The clerks of the regular federal courts, *i. e.*, the district courts, the circuit courts of appeals, the courts of the District of Columbia, and the Supreme Court, are appointed and removable by the judges of the courts in which they serve.<sup>1</sup> Each court has a clerk. The duties of the office, however, in one of the busy federal courts could not possibly be performed by one person. The law, therefore, provides for the appointment of numerous deputy clerks and clerical assistants. Where, for instance, there are several divisions of a district court or several places designated by statute for holding court, a deputy is appointed to reside permanently at the seat of each division or place of holding court. In the district courts, the clerks may appoint deputies and clerical assistants when authorized by the Attorney General and at the

<sup>1</sup> Jud. Cod. secs. 3, 124, 219; and act of March 4, 1921, c. 161, sec. 1, 41 Stat. L., 1412.

rate of compensation fixed by him.<sup>2</sup> This provision includes the district courts of Hawaii, and Porto Rico, and the Supreme Court of the District of Columbia,<sup>3</sup> and has been extended to cover the deputies and clerical assistants of the clerks of the circuit courts of appeals.<sup>4</sup> Deputy clerks of the Supreme Court are appointed and removed by the court.<sup>5</sup> The deputy clerks of the district courts hold office during the pleasure of the court;<sup>6</sup> those of the circuit courts of appeal may be removed by the clerk with the approval of the court.<sup>7</sup>

Until 1919 the clerks of the federal courts were paid from fees collected for the various services which they rendered. Their compensation was limited to a certain amount, \$3500 in the case of clerks of the district courts; and all fees and emoluments over and above that amount were turned into the Treasury of the United States. The fees continue to be levied against private litigants, but they are all turned into the Treasury and the clerks receive their salary-checks from the marshals.<sup>8</sup> The Clerk of the Supreme Court, however, is still paid by fees prescribed by that court. His compensation is limited to \$6000 and expenses as allowed by the court.<sup>9</sup>

The salaries of the clerks of the circuit courts of appeals, the district courts, the courts of the District of Columbia, and the district court of Hawaii and of Porto Rico are fixed by the Attorney General within the limits of \$2500 and \$5000, according to the business of the office under consideration for the four years preceding the determination of the salary.<sup>10</sup> The salaries of the

<sup>2</sup> Act of February 26, 1919, c. 49, sec. 4, 40 Stat. L., 1182; Instructions to court officials, 1925, no. 1158.

<sup>3</sup> Act of March 4, 1921, c. 161, 41 Stat. L., 1412; act of January 3, 1923, c. 21, Title II, 42 Stat. L., 1084.

<sup>4</sup> Act of June 1, 1922, c. 204, 42 Stat. L., 616.

<sup>5</sup> Jud. Cod. sec. 221.

<sup>6</sup> Jud. Cod. sec. 4.

<sup>7</sup> Jud. Cod. sec. 125.

<sup>8</sup> Act of February 26, 1919, c. 49, secs. 6, 7 and 8, 40 Stat. L., 1182.

<sup>9</sup> Act of March 3, 1883, c. 143, 22 Stat. L., 631.

<sup>10</sup> Acts: February 26, 1919, c. 49, sec. 2, 40 Stat. L., 1182; June 5, 1920, c. 235, sec. 1, 41 Stat. L., 923; March 4, 1921, c. 161, sec. 1, 41 Stat. L., 1412; June 1, 1922, c. 204, 42 Stat. L., 616.

The acts of June 5, 1920, and March 4, 1921, extended to the clerk's office of the Supreme Court of the District of Columbia the powers of the Attorney General relative to salaries in the clerk's office conferred by the act of February 26, 1919. The act of December 6, 1924, c. 5, 43 Stat. L., 704,

clerks of the district courts of the United States, and of Hawaii, may be readjusted by the Attorney General not oftener than once in every four years.<sup>11</sup> The law does not provide for the readjustment by the Attorney General of the salaries of the other clerks whose salaries were fixed by him originally. The section (843) of the Revised Statutes, requiring that the compensation of the clerks must be paid from the fees of the office has never been repealed; its only effect now, however, can be to prevent the Attorney General from fixing a clerk's salary above the fees that he collects in a year.

The authorization of the Attorney General must be obtained for the office and traveling expenses of the clerks, and their deputies, of both the district courts and the circuit courts of appeals.<sup>12</sup> Unless such authorization and approval is obtained in advance, a clerk is liable to have the unauthorized items disallowed upon presenting his accounts for payment to the Department of Justice.<sup>13</sup> The Attorney General is authorized to fix and allow compensation and expenses of clerks for replacing files in which the United States is interested and which have been destroyed.<sup>14</sup>

Since the clerks of court handle great sums of money, belonging to the United States and to private individuals 'as well, they are required to execute substantial bonds to the United States for the protection both of the United States and of the private litigants. Over the amount of these bonds the Attorney General has control. Clerks of the district courts, the circuit courts of appeals, and the Supreme Court must each give bond to the United States in an amount between \$5000 and \$20,000. The actual sum within

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appropriating money for the fiscal year 1925, extended to the field services the rates established by the Classification Act of 1923 for positions in the departmental service, and provided that the rates established under the Classification Act should be in effect during the fiscal year 1925, notwithstanding specific rates of compensation or salary restrictions carried in any other act. A similar general provision for one year only has been carried in the appropriation acts for the fiscal years 1926 and 1927. This may have wiped out the limitation of \$5000 for the salaries of court clerks carried in the act of February 26, 1919.

<sup>11</sup> Act of April 26, 1922, c. 146, 42 Stat. L., 500 (district courts); act of June 1, 1922, c. 204, 42 Stat. L., 616 (Hawaii).

<sup>12</sup> Sec. 561, Rev. Stat.; act of February 26, 1919, c. 49, secs. 3, 4, 5, 40 Stat. L., 1182; act of June 1, 1922, c. 204, 42 Stat. L., 616.

<sup>13</sup> Instructions, 1925, nos. 1169-71.

<sup>14</sup> Sec. 904, Rev. Stat., as amended by act of January 31, 1897, c. 39, sec. 3, 20 Stat. L., 277.

the limits is determined by the Attorney General, who may at any time call for a new bond or a bond for an increased amount. With thirty days' notice and upon motion of the Attorney General, in the case of clerks of the circuit courts of appeals and the Supreme Court, or the district attorney, upon the requirement of the Attorney General in the case of the clerks of the district courts, a new bond or a bond in an increased amount within the limits set above may be required by the court in which the clerk serves.<sup>35</sup> A district court may require its deputy clerks to give bonds under conditions similar to those governing the clerks.<sup>36</sup> Any court of its own motion may require at any time, an increased bond from its clerk.<sup>37</sup> In any district court, whenever the amount of business makes it necessary, the Attorney General may require the clerk to give a new bond in a sum not exceeding \$40,000.<sup>38</sup>

The bonds are filed in the Department of Justice, where they must be examined once every two years and may be examined oftener if deemed necessary. At each biennial examination the bonds may be approved as to the sufficiency of the sureties and amounts, the amounts may be raised or lowered, or new sureties may be required.<sup>39</sup> The Attorney General may<sup>40</sup> and usually does<sup>41</sup> require new bonds from the clerks every four years.

The accounts of clerks of courts are rendered to the Department of Justice and examined under the supervision of the Attorney General.<sup>42</sup> Clerks of the district courts are required to account quarterly on forms prescribed by the Attorney General for all the fees and emoluments collected by their offices from private litigants.<sup>43</sup> They must also render a yearly account covering their four quarterly accounts and the money in the registry of the court to which they are attached. Since the expenses of their offices

<sup>35</sup> Sec. 794, Rev. Stat.; Jud. Cod., secs. 124, 125, 220. Acts of February 22, 1875, c. 95, sec. 3, 18 Stat. L., 333; July 1, 1918, c. 113, sec. 1, 40 Stat. L., 683. Some doubt should be expressed as to this analysis of the law governing the bonds of the clerks of the circuit courts of appeals.

<sup>36</sup> Sec. 796, Rev. Stat.

<sup>37</sup> Sec. 795, Rev. Stat.

<sup>38</sup> Act of February 22, 1875, c. 95, sec. 2, 18 Stat. L., 333.

<sup>39</sup> Act of March 2, 1895, c. 177, sec. 5, 28 Stat. L., 807.

<sup>40</sup> Act of July 1, 1918, c. 113, sec. 1, 40 Stat. L., 683.

<sup>41</sup> Instructions, 1925, nos. 1148-53.

<sup>42</sup> Sec. 368, Rev. Stat.; act of July 31, 1894, c. 174, sec. 13, 28 Stat. L., 210.

<sup>43</sup> Act of February 26, 1919, c. 49, sec. 9, 40 Stat. L., 1183.



are no longer paid by fees but authorized in Washington and paid by the marshals, the clerks are no longer required to account for expenses.<sup>24</sup>

The clerks of the circuit courts of appeals must make annual returns of their fees and emoluments.<sup>25</sup> The Clerk of the Supreme Court must make returns of his fees, emoluments, and expenses on January first of each year on forms prescribed by the Attorney General.<sup>26</sup>

The accounts are carefully audited in the Department of Justice, where accounts of moneys due from the clerks to the United States are kept.<sup>27</sup> The Attorney General is required to see that the clerks conform to the law regarding the keeping of accounts;<sup>28</sup> and he, therefore, prescribes the books, dockets, and account forms used by them.<sup>29</sup> To give him effective control over the clerks, money is annually provided for the examination of their offices. The district courts are authorized to issue a writ of mandamus, on the motion of the Attorney General or a district attorney, to compel a clerk to perform all duties required of him by law;<sup>30</sup> and there is a criminal penalty for refusal to render accounts as required by law.<sup>31</sup> If a clerk refuses to perform his duties properly, the President is authorized and required to remove him from office.<sup>32</sup>

In 1898 Congress exercised its power to prescribe a uniform rule of bankruptcy, and provided that the Attorney General shall submit to Congress annually statistics relating to bankruptcy, and that the clerks of courts shall supply the necessary information to the Attorney General.<sup>33</sup> Further correspondence with the Department of Justice is required in two cases. Without the consent

<sup>24</sup> Sec. 833, Rev. Stat. and act of June 28, 1902, c. 1301, sec. 1, 32 Stat. L., 475.

<sup>25</sup> Act of June 6, 1900, c. 791, sec. 1, 31 Stat. L., 639; Instructions, 1925, nos. 1300-03.

<sup>26</sup> Act of March 15, 1898, c. 68, sec. 8, 30 Stat. L., 317.

<sup>27</sup> Sec. 845, Rev. Stat.

<sup>28</sup> Sec. 839, Rev. Stat.

<sup>29</sup> Act of June 30, 1906, c. 3914, sec. 1, 34 Stat. L., 754; Instructions, 1925, nos. 1234-72.

<sup>30</sup> Act of February 22, 1875, c. 95, sec. 4, 18 Stat. L., 333.

<sup>31</sup> *Ibid.*, sec. 6, p. 334.

<sup>32</sup> *Ibid.*, sec. 5, p. 334.

<sup>33</sup> Act of July 1, 1898, c. 541, sec. 54, 30 Stat. L., 559.

of the Attorney General no clerk may hold the office of commissioner; and clerks are required to report at once the names of commissioners appointed in their districts.<sup>38</sup> At the end of each term of court, district clerks must send to the Solicitor of the Treasury a list of all judgments to which the United States is a party,<sup>39</sup> and once a year they must submit a report of suits to which the United States is not a party.<sup>40</sup>

**Special Court Clerks.** The clerks of courts in Alaska must make quarterly returns of all fees and emoluments and keep books and dockets prescribed by the Attorney General.<sup>41</sup> They must file bonds of \$20,000.<sup>42</sup> They are still paid by fees prescribed by Congress. For any duties to be performed for which no fees are prescribed, the Attorney General is authorized to promulgate and revise a list of fees.<sup>43</sup> The compensation of a clerk in Alaska is limited to \$3000 annually.<sup>44</sup> The Attorney General fixes the official residence of the clerks, and the appointment of and compensation for deputies and clerical assistance must have his approval.<sup>45</sup>

Over the clerks of the Court of Claims and of the Court of Customs Appeals, the Attorney General has only that general supervision which he exercises over the accounts of all judicial officers. Their accounts are examined in the Department of Justice. A Chief Clerk and one Deputy Clerk of the Court of Claims is authorized in the discretion of the court,<sup>46</sup> and the Secretary of the Treasury approves the bond of the chief clerk.<sup>47</sup>

The Court of Customs Appeals appoints one Clerk and a stenographer to report its decisions.<sup>48</sup> The Clerk accounts for his fees to the Treasurer of the United States.<sup>49</sup>

<sup>38</sup> Act of May 28, 1896, c. 252, 29 Stat. L., 184, sec. 19, as amended by act of March 2, 1901, c. 814, 31 Stat. L., 956.

<sup>39</sup> Sec. 797, Rev. Stat., as amended by act of March 1, 1897, c. 125, sec. 2, 20 Stat. L., 327.

<sup>40</sup> Instructions, 1925, nos. 132, 1326-31.

<sup>41</sup> Acts: June 6, 1900, c. 786, sec. 10, 31 Stat. L., 325; June 30, 1906, c. 3914, sec. 1, 34 Stat. L., 754.

<sup>42</sup> Act of June 6, 1900, c. 786, sec. 12, 31 Stat. L., 326.

<sup>43</sup> *Ibid.*, sec. 30, p. 332.

<sup>44</sup> Act of March 3, 1909, c. 269, sec. 5, 35 Stat. L., 841.

<sup>45</sup> Act of June 6, 1900, c. 786, sec. 7, 31 Stat. L., 324, as amended by act of March 3, 1909, c. 269, sec. 3, 35 Stat. L., 840.

<sup>46</sup> Sec. 1053, Rev. Stat.

<sup>47</sup> Sec. 1055, Rev. Stat.

<sup>48</sup> Jud. Cod. sec. 192.

<sup>49</sup> Jud. Cod. sec. 191.

On November 1, 1925, there were eighty-four district clerks and 724 deputies, and nine clerks of the circuit courts of appeals, with twenty-six deputies. The district clerks received an average annual salary of \$4702, and their deputies, an average salary of \$1625. The clerks and deputy clerks of the circuit courts of appeals received average annual salaries, respectively, of \$4695 and \$1936.<sup>48</sup>

<sup>48</sup> House Hearings on the Department of Justice appropriation bill, 1927, p 263

## CHAPTER IX

### UNITED STATES PRISONERS

**Pardons.** To perform the administrative duties relating to the granting of pardons and reprieves, the President makes use of the Department of Justice. This work is entrusted to the Pardon Division in charge of the Pardon Attorney.<sup>1</sup>

Through this division go applications for executive clemency in all cases except those arising in the Army and Navy. The Pardon Attorney corresponds with the district judge who sentenced the prisoner, with the district attorney who prosecuted the case, with the warden of the penitentiary in which the applicant is, or was, incarcerated, and with any other persons who might be interested. A search is then made for any information the Bureau of Investigation may have concerning the applicant. This may be found in the files of the Division of Identification, or it may be gathered by one of the agents who may be assigned to investigate the applicant. The information thus accumulated is digested and arranged by the Pardon Attorney. With his recommendations, the application and the digest of information is passed on to the Attorney General, who appends his recommendation and sends the papers to the President for his action. The report of the Pardon Attorney is made a part of the Annual Report of the Attorney General. It includes a list of pardons or commutations granted during the year, with the recommendation of the Attorney General and the action of the President thereon.

**Prisons.** The national penal institutions are placed under the control and management of the Attorney General, who is authorized to promulgate rules for their government and to designate the federal prisons to which the federal courts must sentence prisoners.<sup>2</sup>

<sup>1</sup> House Hearings on the Department of Justice appropriation bill, 1927, p. 49.

<sup>2</sup> Sec. 5549, Rev. Stat.; acts: March 3, 1891, c. 529, secs. 4 and 9, 26 Stat. L., 839, 840; March 3, 1901, c. 873, 31 Stat. L., 1450; September 1, 1916, c. 433, 39 Stat. L., 711.

These institutions are :

1. Penitentiary at Leavenworth, Kansas \*
2. Penitentiary at Atlanta, Georgia \*
3. Penitentiary at McNeil Island, Washington \*
4. Federal Industrial Institution for Women at Alderson, West Virginia \*
5. United States Industrial Reformatory for Men at Chillicothe, Ohio \*
6. The National Training School for Boys at Washington, D. C. \*

For the incarceration of prisoners for short terms or while awaiting trial, the national government makes use regularly of state penitentiaries and jails. To defray the expenses of federal prisoners in state institutions, the Attorney General must enter into numerous contracts, at least one for each state and often one for each prison in a state. The use of state prisons is purely a matter of comity, and the Attorney General occasionally experiences considerable difficulty in maintaining adequate control and in obtaining reports.<sup>9</sup> The only jails controlled by the national government are situated in Alaska. The more important of these are owned by the United States; the others are rented. These jails are under the local control of the marshals, but they come under the general supervision of the Superintendent of Prisons. They are used both for the confinement of prisoners awaiting trial and for the incarceration of convicts.<sup>10</sup>

The national government maintains a hospital for the insane in the District of Columbia. If a federal prisoner becomes insane, the Secretary of the Interior is authorized, upon application of

\* Acts: March 2, 1895, c. 189, sec. 1, 28 Stat. L., 957; June 10, 1896, c. 400, 29 Stat. L., 380.

<sup>9</sup> Act of March 3, 1899, c. 424, sec. 1, 30 Stat. L., 1113.

<sup>10</sup> Act of May 27, 1908, c. 200, 35 Stat. L., 374.

<sup>11</sup> Act of June 7, 1924, c. 287, 43 Stat. L., 473.

<sup>12</sup> Act of January 7, 1925, c. 32, 43 Stat. L., 724.

<sup>13</sup> Acts: May 3, 1876, c. 90, 19 Stat. L., 49; June 4, 1880, c. 121, 21 Stat. L., 156; August 6, 1890, c. 724, sec. 1, 26 Stat. L., 307; June 5, 1900, c. 715, 31 Stat. L., 267; March 19, 1906, c. 960, sec. 8, 34 Stat. L., 74; May 27, 1908, c. 200, 35 Stat. L., 380; February 26, 1909, c. 217, 35 Stat. L., 657. The acts cited under this and the preceding items is the legislative authorization for the discussion that follows.

<sup>14</sup> Secs. 5545 and 5547, Rev. Stat.

<sup>15</sup> Act of June 6, 1900, c. 786, sec. 31, 31 Stat. L., 332; House Hearings, 1927, pp. 335ff.

the Attorney General, to admit the prisoner to the hospital. If the prisoner cannot be accommodated in this hospital or if the Attorney General considers that it would be better to place him in a state asylum in the state in which the conviction took place, the Attorney General may enter into contract with the state institution. If the prisoner's sanity is restored, he is returned to a regular prison."<sup>11</sup>

*Office of Superintendent of Prisons.* To supervise the management of the federal penitentiaries and reformatories and the care of federal prisoners in state institutions, there is a Superintendent of Prisons, whose office forms a subdivision of the Division of Prohibition and Taxation. Besides the Superintendent, the office includes an Assistant Superintendent, three inspectors, and a number of clerks. As their designation indicates, the inspectors travel about the country, examining the conditions and accounts at the federal institutions and visiting state and county institutions at which federal prisoners are incarcerated. They are especially useful in enforcing the proper treatment of prisoners and in examining the bills that the government must pay for the maintenance of prisoners at the state institutions.

*Leavenworth Penitentiary.* The penitentiary at Leavenworth is operated under the immediate control of a warden appointed by the Attorney General. This warden is also a special disbursing agent. He is assisted by a chief clerk, who attends to the routine administrative matters and keeps the accounts. The officers of the penitentiary include a superintendent of farms, two chaplains, a mail clerk, who supervises the mail received and sent by prisoners, a superintendent of construction, a physician, and a record clerk, who prepares statistics of criminology and criminal identification records.

The hospital at Leavenworth employs 115 persons. It includes, besides a hospital for general purposes, a special annex for tubercular prisoners. Its technical staff includes dentists and specialists in the more usual medical and surgical fields. Although the civil prison was authorized in 1896, the construction work is still under way. The demands for housing and employment of the prison population, which is rapidly increasing as the result of the prohibition and narcotic acts, has already exceeded the accommodations. The prisoners perform all the construction work on the various

<sup>11</sup> Act of June 23, 1874, c. 465, 18 Stat. L., 251, as amended by act of August 7, 1882, c. 433, sec. 1, 22 Stat. L., 330.

buildings. Civilians need be employed only in supervisory capacities. The prisoners are now employed in building an administration building for the penitentiary, a shoe, broom, and brush factory, a bridge across the Missouri River, and barracks on the Missouri side. It is necessary for the government to purchase only stone and nails for the construction work. Lumber is cut from the prison reservation by prison labor and bricks are made by the prisoners.

There are two prison farms at Leavenworth; one of 320 acres in Kansas, which has been in use for a number of years, the other of 940 acres in Missouri. The farm in Kansas raises vegetables, fruits, cattle, and hogs, and produces milk and other dairy products. About two hundred prisoners are continually employed. While the produce does not supply all the food for the prison, it serves materially to reduce the cost of maintenance and gives healthful employment to the convicts. The net value at wholesale prices of the produce was \$31,843.74 in 1925. In 1924 Congress directed the Secretary of War to transfer to the Department of Justice that portion of the Leavenworth Reservation lying in Missouri, and appropriated money for the construction of a bridge across the river.<sup>22</sup> This farm is now being cleared by trusties to the number of about 125. A part is already cleared and has yielded one crop of corn. The Superintendent of Prisons hopes when this new farm is completely under cultivation to supply practically all the food used at the prison.

The prison already has the following shops: Carpenter, blacksmith, tin, brush and broom, tailor, shoe, and printing. In the tailor shop is made all the clothing needed by the prisoners at Leavenworth. The shoe shop makes shoes not only for its own inmates but also for those at McNeil Island and at state institutions. In 1924 Congress authorized the establishment at Leavenworth of a manufactory of shoes, brooms, and brushes.<sup>23</sup> This factory is now in the process of construction by convict labor. When completed, it will give employment to a thousand or more prisoners. It will produce shoes not only for all federal prisoners but also a large proportion of the shoes used in the Army and Navy, and all the brushes and brooms used by the national government.

<sup>22</sup> Act of May 31, 1924, c. 221, 43 Stat. L., 248.

<sup>23</sup> Act of February 11, 1924, c. 17, 43 Stat. L., 6.

The output of the prison factory is used entirely by the government. The departments are authorized to purchase in the open market only when prison products are not available. The prices at which the prison products are sold to the department are fixed, so the law provides, by the Attorney General at current market prices. In practice, they are fixed by the Superintendent of Prisons at about 10 per cent under current market prices. From the proceeds of the sales, the prisoners are allowed a small bonus, which is paid to their dependents or accumulated for them and delivered on release from prison. Congress annually reappropriates a working capital fund to run the factory. The administration of a prison factory which operates as a private institution will be described more in detail when the older cotton factory at Atlanta is discussed.

The chaplains, in addition to religious work at the penitentiary, supervise athletics in off-periods for the prisoners. They also have charge of the library from which prisoners draw books. Under their general supervision, a night school for the prisoners is conducted. There were in 1925, 1300 students and an instruction staff of seventy. The instructors are prisoners. The course of study includes elementary, grammar, and secondary subjects, with business and technical branches and languages. The library is supplied by both purchase and donation. Materials needed for religious services are supplied by the various religious organizations throughout the country.<sup>34</sup>

*Atlanta Penitentiary.* Besides a warden, appointed by the Attorney General, the officers of Atlanta Penitentiary include: a chief clerk, who attends to routine administrative matters and keeps the disbursement accounts of the warden, who is a special disbursing agent; a physician who is superintendent of the hospital; a record clerk, who investigates and compiles criminal statistics and makes identification records; two chaplains; an oculist; a dentist; a general mechanic; and a superintendent of the duck mill.

Under the direction of the general mechanic such construction and repair as is needed at the prison is executed by prisoners. This work includes additions to the cotton factory and additions to the penitentiary. For this work prisoners are employed in the

<sup>34</sup> Attorney General, Annual Report, 1924, pp. 323-36; 1925, pp. 335-46; House Hearings, 1926, pp. 191-99; 1927, pp. 297-306.



following occupations: blacksmiths, machinists, bricklayers, carpenters, stone cleaners and pointers, concrete workers, painters, glaziers, plasterers, plumbers, structural steel workers, and tinner.

The penitentiary has two farms. One farm of 101 acres is operated under the supervision of the general mechanic. The other farm of 452 acres is conducted by an assistant deputy warden. Both raise grain and truck. There seems to be no likelihood of the prison raising sufficient food for its own maintenance. The climate is variable and droughts often occur. The Department of Agriculture, which works in close connection with the Department of Justice in the management of all of its prison farms, is considering the advisability of irrigation. A proposal has been made to turn the land into the production of cotton and to install a yarn factory to make yarn for the duck mill.

The investment of the government in the cotton mill at Atlanta in 1918<sup>15</sup> has proved a very profitable one. The factory gives employment to about seven hundred prisoners. The product consists of canvas, sheeting, and nainsook. The mill's only customers are departments of the national government and the governments of the territories and insular possessions. The heaviest purchasers are the Navy and Post Office departments. All the mail sacks are made at Atlanta. The Attorney General is directed to fix the price of the products at the current market rate. In practice the prices are fixed by the Superintendent of Prisons at from 10 to 20 per cent under the current market rate.

The cotton factory has its own capital fund and is run not as a department of the government but as a private institution. The Attorney General is authorized to pay the prisoners for their labor. They are paid "according to the man hours that are worked," from a fund made up of two cents on each yard of cloth produced. In 1925 the average overhead on the production of cloth including the bonus paid to prisoners was \$.0434 per yard. Sales in 1925 amounted to \$1,682,278.74, with a net profit of \$93,982.75, exclusive of \$70,158.58 paid as bonuses to the prisoners.

Congress reappropriates annually a working capital fund of \$150,000. Out of the profits of the business a surplus of \$615,860.37, had been built up at the close of the fiscal year 1925. This fund is available for the purchase of yarn and supplies. After

<sup>15</sup> Act of July 10, 1918, c. 144, 40, Stat. L., 896.

the factory and business has been expanded to the full capacity of the penitentiary and the surplus is sufficiently large, it will be possible for Congress to discontinue appropriations to the capital fund and, in time, the prisons with efficient management should produce a net revenue. The banker for the cotton concern is the Treasurer of the United States. On the order of the Attorney General he receives and pays out the funds of the business. The money received is not "covered into" the Treasury, but is always available without appropriation by Congress.

Experiments are now being made with a view to the manufacture of khaki at Atlanta. If these are successful, the penitentiary officers expect to supply the needs of the entire Army.

The chaplains supervise athletics for the prisoners and conduct religious services. They have in charge a library of about 21,000 volumes. In connection with the library, some prisoners are employed in a bindery which binds books for both the library and the other departments of the prison. The chaplains also conduct a night school in which courses are given ranging from elementary to college grades. The teachers are prisoners."

*McNeil Island Penitentiary.* The penitentiary at McNeil Island is under the immediate control of a warden appointed by the Attorney General. The warden is also a special disbursing officer. Besides the warden, the prison staff includes a chaplain and a physician. The jail now houses more than six hundred prisoners, who are engaged in constructing additions to the prison, operating a farm of thirty-nine acres, clearing another piece of land, 360 acres in extent, recently acquired from the State of Washington, and repairing the prison plant. In this prison are most of the Orientals sentenced in the federal courts.

Under the supervision of the chaplain are conducted religious services, recreation, the library, education, and a print shop. Besides athletics, motion pictures, and amateur theatricals, a brass band and an orchestra have been organized. Opportunity is given the prisoners to learn music and many accept. The prison library has five thousand books. The chaplain has developed a small print shop, the furnishings and plant being supplied by printers

" Annual Report, 1924, pp. 76, 337-54; 1925, pp. 53, 55, 350-67; House Hearings, 1926, pp. 199-203; 1927, pp. 306-11.

in Tacoma. This plant issues a prison paper and does some job printing for the prison.<sup>37</sup>

*Industrial Institution for Women.* To the Industrial Institution for Women, all women over the age of 18 convicted in the federal courts may be committed if the Attorney General considers them proper subjects for incarceration in the institution. The Attorney General may also transfer from the institution any prisoner who is incorrigible or whose presence is found detrimental to the well-being of the institution. The institution is located on a tract of five hundred acres near Alderson, West Virginia. By the end of 1927 it is expected that it will house two hundred inmates.

The Attorney General appoints the officers and employees at the institution. An experienced woman was appointed superintendent as soon as money was appropriated by Congress. The institution is in no sense a prison. The women will be housed in two-story buildings, each accommodating thirty women and their warders. Each will be a complete unit, with its own dining hall. Separate buildings are provided for tubercular inmates and drug addicts. Nursery cottages are planned for the accommodation of mothers and their babies. The plant will include an administration building and a hospital.

The enabling act makes it the duty of the Attorney General to provide for the instruction of inmates in the common branches of an English education, and for training in such trade, industry, or occupational pursuit as will best enable those released to obtain self-supporting employment. It is planned to use the women to run the farms and tend the flower beds. The education facilities will include a cooking school and the prison kitchens will be used for practical experience. There will be courses in home nursing, sewing, and other special branches that tend to increase women's capacity for the enjoyment of home life.

The law provides for the appointment by the President of four citizens of prominence and distinction who serve without pay and together with the Attorney General and the Superintendent of Prisons constitute a Board of Advisors. The duty of this Board is to recommend ways and means for the discipline and training of the inmates and, on their discharge, to secure suitable em-

<sup>37</sup> Annual Report, 1924, pp. 77, 355-58, 1925, pp. 53, 54, 55, 368-72; House Hearings, 1926, pp. 203-04, 1927, pp. 311-14.

ployment for them. Some of the members of the Board have already been appointed and have assisted in the planning of the institution.<sup>18</sup>

*Industrial Reformatory for Men.* First offenders between the ages of 17 and 30 who are sentenced for a year or more, except those convicted of murder, rape, or arson or those sentenced for life, may be incarcerated at the Industrial Reformatory for Men. The Attorney General is given discretion to transfer to or from the reformatory persons eligible to incarceration therein. As a site for the institution, the War Department has transferred to the Department of Justice the military reservation at Chillicothe, Ohio, which includes nearly two thousand acres of tillable land. The United States Veterans' Bureau had erected on the reservation twenty-one vocational training shops which have been transferred with their equipment for the use of the reformatory.

Twenty eligible prisoners were first transferred from Leavenworth. Under guards, this squad cleared the grounds and prepared for a greater population, which has now reached 125. Until a permanent plant is established, the prisoners will continue to use the military barracks, some of which are being reconditioned. The buildings on the reservation that are to be torn down will supply sufficient lumber for the permanent plant. The reservation includes banks of clay and shale from which bricks will be made for the permanent buildings. The reformatory will be unwalled.

It is the duty of the Attorney General "To provide for the instruction of the inmates in the common branches of an English education, and for their training in such trade, industry, or skilled vocation as will enable said inmates, upon release, to obtain self-supporting employment and to become self-reliant members of society. For this purpose the Attorney General shall establish and maintain a common school and trade schools in said industrial reformatory." The vocational training shops are so arranged that classes numbering from ten to thirty persons can be given practical instruction. Among the training shops are the following: Machine, carpenter, sheet metal working, plumbing, steam fitting, furniture upholstering, automobile body upholstering, automobile painting and finishing, automobile engine and chassis building and repairing, ignition repairing, vulcanizing, electrical wiring and

<sup>18</sup> Annual Report, 1925, pp. 56-59; House Hearings, 1927, pp. 314-21.

supply repairing, typewriter repairing, and sign painting. The reformatory will have, also, a truck farm, a dairy farm, and a hog farm.

Two prominent citizens appointed by the President, to serve without pay, together with the Attorney General, the Superintendent of Prisons, and the Superintendent of the Reformatory, form a Board of Advisors. It is the duty of this Board to "devise ways and means looking to the reestablishment in society of the inmates discharged" from the reformatory.

The Attorney General appoints the Superintendent of the reformatory and all of its other officers. He has complete authority to provide for the management and control of the institution. The products of the reformatory may be sold only to the federal government.\*

*National Training School for Boys.* Seven persons appointed by the President upon the recommendation of the Attorney General and one of the Commissioners of the District of Columbia designated by the Board of Commissioners are incorporated as the "Board of Trustees of the National Training School for Boys." A Senator appointed by the Presiding Officer of the Senate and a Representative appointed by the Speaker serve as "consulting trustees." Under the general supervision of the Attorney General, the Board of Trustees appoints all the officers and employees of the school and makes rules and regulations for its government. The President of the Board makes an annual report to the Attorney General. The institution is operated under the immediate control of a Superintendent.

To the Training School are committed both white and negro boys under the age of 17 from both the federal courts and the courts of the District of Columbia. The races are, however, segregated. When a boy is committed, he is sentenced to the school until he is twenty-one. He may, however, be paroled and released by the Superintendent.

The plant includes an administration building, six family buildings, a school building, a gymnasium, a hospital, a shop building, an assembly hall, a bakery and boiler house, barns, a piggery, and poultry houses. The school has a campus of 320 acres. The boys are instructed in various vocational branches, such as blacksmithing, baking, carpentry, cooking, shoemaking and repairing, tailoring,

\* House Hearings, 1927, pp. 325-31.

care and management of steam boilers, plumbing, gas-fitting, electric wiring, automobile repairing, laundrying and hand ironing, painting and glazing, farming and gardening, cattle raising and dairying, military science and tactics, and music. A brass band of twenty-five pieces is made up of the white students, and there is a fife and drum corps of negro boys. The school is divided into seven family groups. Each is presided over by a matron and each forms a company of the military corps headed by student officers. Each boy is required to attend the graded school for a half-day during nearly the entire year. The school faculty includes six teachers and classes are given covering subjects of elementary and high school grades.<sup>20</sup>

**Commutations for Good Conduct.** Wherever he or she may be incarcerated, each prisoner convicted under the laws of the United States is allowed commutation for good conduct in accordance with a standard schedule established by Congress. The schedule follows:

Sentence	Commutation
Not less than 6 months nor more than 1 year .....	5 days per month
Not less than 1 year nor more than 3 years.....	6 days per month
Not less than 3 years nor more than 5 years.....	7 days per month
Not less than 5 years nor more than 10 years.....	8 days per month
10 years or more.....	10 days per month

When a prisoner has several sentences to be served consecutively, the commutation for good conduct is allowed as if the aggregate of the sentences were a single sentence. The total good conduct commutation is deducted from the total sentence imposed and the prisoner is released accordingly. If for any reason a prisoner forfeits part or all of his good conduct commutation, the Attorney General, on recommendation of the warden of the institution in which the prisoner is incarcerated, may restore the amount forfeited in whole or in part. What constitutes good conduct for which the commutation is allowed, is determined for the federal institutions in accordance with rules promulgated by the Attorney General. For prisoners in the state and territorial institutions, the rules constituting good conduct are the same for the federal as for the state or territorial prisoners.<sup>21</sup>

<sup>20</sup> Annual Report, 1924, pp. 77, 359-64; 1925, pp. 55, 373-78; House Hearings, 1926, pp. 207-09; 1927, pp. 340-43.

<sup>21</sup> Sec. 5544, Rev. Stat.; acts: March 3, 1891, c. 529, sec. 8, 26 Stat. L., 840; June 21, 1902, c. 1140, 32 Stat. L., 397; June 7, 1924, c. 287, sec. 8, 43 Stat. L., 475; January 7, 1925, c. 32, sec. 9, 43 Stat. L., 726.

**Paroles.** All persons convicted under federal law and sentenced to a definite period of over one year, except those incarcerated in state reformatories having parole systems prescribed by the law of the states in which they are located, may be paroled on the approval of the Attorney General upon recommendation of a board of parole. For each federal institution except the National Training School for Boys, the Superintendent of Prisons, the warden, and the physician of the penitentiary in question constitute the Board of Parole. For state institutions in which federal prisoners are incarcerated, the Attorney General designates the two officers who with the Superintendent of Prisons constitute the Board of Parole for that institution. Paroles from the National Training School for Boys are wholly within the authority of the trustees. Federal prisoners in state reformatories having parole systems established by state law are governed by the state system. The chief clerk at each federal institution is the clerk of the Board of Parole.

The Superintendent of Prisons makes regular calls at the various institutions to preside over the Boards of Parole. Before a prisoner is eligible to parole he must have served one-third of his sentence or, in case of life terms, fifteen years. The prisoner makes formal application for parole. The Board hears him and the prison officers. It may deny a parole or grant one upon any terms or conditions it chooses to impose. The parole becomes effective on the approval of the Attorney General.

The Board of Parole at each institution appoints a parole officer and fixes his or her salary at not more than \$1500, payable out of the funds from which the expenses of incarceration of the prisoner is paid. It is the duty of the parole officer, under the control of the Board of Parole, to procure employment for the paroled prisoners, to visit them and supervise their conduct, and to perform other functions as directed by the Board. If it appears to the satisfaction of the warden or a member of the Board of Parole of the institution from which a prisoner is paroled that the prisoner has violated the terms of his parole, the warden may issue a warrant for the prisoner's apprehension, which may be executed by an officer of the prison or any officer of the United States authorized to execute criminal process. If a prisoner is reincarcerated, the facts must be presented to the Board of Parole at its next meeting and the prisoner heard in his defense. The Board may then revoke the

parole and the prisoner must serve the remainder of the sentence originally imposed without taking into account the time that he was out on parole.<sup>22</sup>

**Discharge Allowances.** All persons convicted under the laws of the United States are entitled to certain discharge allowances. All are entitled to transportation to their residence or place of conviction within the United States or any other place in the United States if authorized by the Attorney General. In addition to transportation, all persons who have served a term of imprisonment of not less than six months are entitled to suitable clothing as authorized by the Attorney General, and, in the discretion of the Attorney General, a sum of money not to exceed twenty dollars.<sup>23</sup>

**Probation.** In 1925 <sup>24</sup> Congress provided for a probation system for the federal courts outside the District of Columbia. When it appears to the satisfaction of any federal court that the ends of justice and the best interests of the public and the prisoner will be subserved, the court may after judgment of guilty put a prisoner on probation unless the offence charged is punishable by death or life sentence. The court may impose on any probationer any conditions it sees fit, including the payment of a fine either in lump or in installments. The probationer may be required to make restitution or reparation for the injury he caused and to provide for persons for whose support he is legally responsible. The probation period may not be longer than five years, but any time within the period of the maximum sentence that might have been imposed, the judge may issue a warrant for a convict's apprehension and impose the sentence which might originally have been imposed.

The court is authorized to appoint probation officers. The probation officers must serve without compensation, but each federal court having original jurisdiction of criminal cases may, with the ap-

<sup>22</sup> Acts: June 25, 1910, c. 387, 36 Stat. L., 819; January 23, 1913, c. 9, 37 Stat. L., 650; June 7, 1924, c. 287, sec. 8, 43 Stat. L., 475; January 7, 1925, c. 32, sec. 9, 43 Stat. L., 726; and acts cited in note 8.

<sup>23</sup> Act of July 3, 1926, c. 795, 44 Stat. L., 901. See also acts: March 3, 1891, c. 529, sec. 6, 26 Stat. L., 840; June 25, 1910, c. 387, sec. 8, 36 Stat. L., 820; June 7, 1924, c. 287, sec. 9, 43 Stat. L., 475; January 7, 1925, c. 32, sec. 10, 43 Stat. L., 726. The act of July 3, 1926, should have repealed these latter sections.

<sup>24</sup> Act of March 4, 1925, c. 521, 43 Stat. L., 1259.



proval of and at the salary fixed by the Attorney General, appoint one paid probation officer. Congress provides annually a special fund for the salaries and expenses of these probation offices. It is the duty of a probation officer to investigate cases referred to him by the court. He must furnish each probationer with a written copy of the conditions of his probation and supervise and aid the probationer in improving his conduct and condition. He must make such reports as the Attorney General may at any time require, and also report to the courts. A probation officer has the same power to arrest as has a deputy marshal. At any time during the probation period the probationer may be arrested without a warrant by the probation officer or on a warrant of the court and brought before the court for sentence.

The general supervision of probation officers has been assigned by the Attorney General to the Superintendent of Prisons. The examiners of the Department of Justice supervise their accounts and the conduct of their offices.<sup>22</sup>

<sup>22</sup> *House Hearings, 1927, pp. 331-33.*

## CHAPTER X

### CONTROL OF LITIGATION TO WHICH THE UNITED STATES IS A PARTY

The control by the Attorney General of prosecutions for crimes against the United States and of civil litigation to which the United States is a party puts into his hands a power which may be used effectively to speed up the administration of law. While it is a power that is liable to abuse, control must be lodged somewhere, and whoever exercises it must be given wide discretion. It would be futile even if it were possible to attempt to frame laws and expect them to be enforced according to the letter and without the intervention of official discretion. Lawyers generally realize that in many of the cases in which they could get an indictment they could never get a judgment. To refuse to allow the district attorneys and the Attorney General to use discretion in such cases and to require them to bring all cases in criminal matters on which they could obtain an indictment or to prosecute all civil cases in which they could frame a declaration which would truly state the facts and be good on demurrer, would so crowd the courts as to break down the already overloaded judicial machinery and result in injustices in many times the number of cases that might conceivably be controlled unwisely under the present system.

The exercise by the public prosecutor of his discretion in the bringing of criminal cases is clearly recognized and encouraged by the courts in England. In *Regina v. Tolson*,<sup>1</sup> the leading case under the bigamy statute, the defendant, if guilty at all under the statute, was only technically so. The majority of the court acquitted the defendant. Mamsby, J., who was for conviction said:

My answer is, that the Act of Parliament says in clear and express words, for very good reasons as I have already pointed out, that she is guilty of bigamy. The only shocking fact would be that some one, for some purpose of his own, had instituted the prosecu-

<sup>1</sup> 23 Q. B. D. 168 (1889).

tion. I need not say that no public prosecutor would ever think of doing so, and the judge before whom the case came on for trial would, as my brother Stephen did in the present case, pass a nominal sentence of a day's imprisonment . . . accompanied, if I were the judge, with a disallowance of the costs of the prosecution.<sup>2</sup>

**Control by the President.** Under the clause of the Constitution making it his duty to see that the laws be faithfully executed, the President has authority to control the actions of district attorneys and the Attorney General in the conduct of suits to which the United States is a party. The Secretary of State submitted for the opinion of the Attorney General a question as to the power of the President to order the discontinuance of a civil suit instituted at the direction of the Commissioner of Internal Revenue. Attorney General R. B. Taney answered:

. . . a competent power has been provided by our frame of Government, which may lawfully put an end to an unfounded prosecution and return the property to its right owner.

. . . the power to grant a *nolle prosequi* is necessarily implied in the power to pardon. . . .

I think the President does possess the power [to order a discontinuance]. The interests of the country and the purpose of justice manifestly require that he should possess it; and its existence is necessarily implied by the duties imposed upon him by that clause of the constitution . . . which enjoins him to take care that the laws be faithfully executed.

. . . the district attorney might refuse to obey the President's order; and if he did refuse, the prosecution, while he remained in office, would still go on; because the President could give no order to the court or the clerk to make any particular entry. He could only act through his subordinate officer, the district attorney, who is responsible to him and who holds his office at his pleasure. And if that officer still continued a prosecution which the President was satisfied ought to be discontinued, the removal of the disobedient officer, and the substitution of one more worthy in his place, would enable the President, through him, faithfully to execute the law.

. . . I consider the district attorney as under the control and direction of the President, in the institution and prosecution of suits in the name and on behalf of the United States; and that it is within the legitimate power of the President to direct him to institute and discontinue a pending suit, and to point out to him his duty, whenever the interest of the United States is directly or indirectly

<sup>2</sup> *Ibid.*, p. 198. See also *Bank of New South Wales v. Piper* [1897], A. C. 383. See Maitland, *Constitutional history of England*, pp. 303, 481.

concerned. And I find, on examination, that the practice of the Government has conformed to this opinion; and that in many instances where the interference of the Executive was asked for, the cases have been referred to the Attorney General, and, in every case, the right to interfere and direct the district attorney is assumed or asserted.\*

**Control by the Attorney General.** In the absence of express prohibition of statute the Attorney General assumes complete authority to begin, regulate, and discontinue all suits to which the United States is a party, whether civil or criminal. The compromise of suits will be discussed presently. So far as this power concerns cases in the process of litigation the Attorney General claims that the power of other officers of the government is in addition to his own. Attorney General Griggs explained it thus:

. . . the primary, broad, and general control by the Attorney-General of suits in which the United States is interested conferred by statutes and established by decision of the Supreme Court . . . fully authorizes such disposition of pending litigation of the Government . . . as seems to him meet and proper. He exercises superintendence and direction over United States attorneys and general supervision over proceedings instituted for the benefit of the United States, and to him is necessarily intrusted, in the exercise of his sound professional discretion and because of the nature of the subject, the determination of many questions of expediency and propriety affecting the continuance or dismissal of legal proceedings. . . . He may absolutely dismiss or discontinue suits in which the Government is interested; *a fortiori* he may terminate the same upon terms, at any stage, by way of compromise or settlement.<sup>2</sup>

**Recognition by the Courts.** The Supreme Court has clearly recognized the control of the Attorney General over suits to which the United States is a party. It declines to hear counsel for the United States in opposition to the view of the Attorney General, even though such counsel is employed on behalf of another executive department of the government.<sup>3</sup> In the Confiscation Cases<sup>4</sup> the Supreme Court held that a district attorney

<sup>2</sup> 2 Op. 482.

<sup>3</sup> 22 Op. 491. See also 23 Op. 507 in which the Attorney General asserted his right to compromise suits against the United States but declined to compromise in the case presented.

<sup>4</sup> The Gray Jacket, 5 Wallace (U. S.) 370 (1866).

<sup>5</sup> 7 Wallace (U. S.) 454 (1868).

may enter a *nolle prosequi* in any case at any time before the jury is empanelled and that the control of suits belong to the district attorney under the general superintendence and direction of the Attorney General:

. . . all such suits, so far as the United States are concerned, are subject to direction, and within the control, of the Attorney General.

In the case of *United States v. San Jacinto Tin Co.*,<sup>7</sup> the Supreme Court clearly recognized that the Attorney General is the officer of the government who controls the bringing and suspension of suits to which the United States is a party.<sup>8</sup>

*Exercise of the Control.* The exercise of the discretion of the Attorney General in the institution and control of prosecutions has already been referred to. Attorney General Wickersham assured business men that he would not authorize suits under the Sherman Act unless he were convinced of an intentional violation.<sup>9</sup> One who reads the reports of the Attorney General covering antitrust cases will realize the necessity for the exercise of this power.<sup>10</sup> Its exercise is finding wide scope in connection with prohibition enforcement. Because of the popular interest in the subject the Attorney General's lot is a hard one. With a steady hand he must steer clear of the charge that he desires to defeat the act, and yet he must be careful not to overburden the judicial machinery by indiscriminate prosecutions. However much an Attorney General may desire to enforce the prohibition act to the letter, to do so is impossible. He must, therefore, use his discretion to obtain the maximum enforcement with the limited means at his disposal. Under his direction the district attorneys must resolutely refuse to bring poorly prepared cases.

The exercise of the control over offenses against the United States, both in regard to their detection and prosecution, is not always well advised. Whether they are sympathetic or hostile to the radical schools of political thought, few people to-day approve of the "Red" activities of the Department of Justice

<sup>7</sup> 125 U. S. 273 (1887).

<sup>8</sup> See also *United States v. Beebe*, 127 U. S. 338 (1887); *United States v. Bell Telephone Co.*, 128 U. S. 315 (1888).

<sup>9</sup> *Case and Comment*, XVI, p. 2 (June, 1909); above chap. II, note 13.

<sup>10</sup> Attorney General, Annual Report, 1924, p. 15; above chap. IV, note 15.

during the administration of Attorney General Palmer. These activities illustrate, however, the great import of the power of the Attorney General to control the enforcement of law. They illustrate, also, what a powerful instrument the government has when similar activities are actually needed and desirable; and the speedy termination of the "Red" activities under popular pressure shows how really effective is the only necessary and proper means of control of this power of the Attorney General. Any law which would prevent these activities would at the same time interfere with the effective suppression of the really criminal activities of the disgruntled groups. It should be stated that whatever charges may be brought against Attorney General Palmer as the result of the "Red" prosecutions, corruption or "bad faith" is not one of them.<sup>11</sup>

**Compromises and Remissions.** The functions of the Solicitor of the Treasury in connection with the compromise of suits and the remission of fines, penalties, and forfeitures has already been mentioned. Administrative expediency may warrant giving to the Secretary of the Treasury, acting through the Solicitor of the Treasury, power to remit fines, penalties, and forfeitures that have been incurred, provided such remissions take place before action in reference to them has been taken in court. It is submitted, however, that the Attorney General is the proper law officer to consult and the proper officer of the executive branch to decide on the compromise of all claims for and against the United States and the question of remission of fines, penalties, and forfeitures when proceedings against the delinquent have been inaugurated in court. After such action has been begun, the Attorney General assumes

<sup>11</sup> See National Popular Government League, *Illegal practices of the Department of Justice* (May, 1920). This is the extreme presentation by eminent lawyers of the adverse side of the case. Even as a *prima facie* case it is not very convincing and no attempt is made to present a judicious view of the matter. Their strongest bit of evidence, extracts from the proceedings in the case of *Katzeff v. Skeffington* before Judge Anderson in the United States district court at Boston, gives one the impression of being "cut." In that case the United States seemed to be very poorly represented, even from the showing published by the league. A number of the charges made in the pamphlet are in no sense sustained by the proof submitted, and in some cases the proof submitted is misleading. See also *Hearings, House Committee on Rules, 66 Cong. 2 sess., Attorney General A. Mitchell Palmer on the charges made against the Department of Justice.*

responsibility for the handling of the case. Instead of having many officers of the government authorized to compromise suits, centralization of this function in a quasi-judicial officer, the Attorney General, is desirable and certain to result in more even handed justice and greater efficiency in judicial administration.

The control of the Secretary of the Treasury over the compromise of claims of the United States arose at a time when the Solicitor of the Treasury was an important law officer. His supervision of the revenue gave him some claim to the exercise of such a function. The same reason serves to explain why other officers of the government have been authorized to compromise suits arising in their departments. The decentralized control of this function has led to numerous charges of favoritism and corruption and made the effective supervision of Congress difficult.

Compromises and remissions fall under the following heads:

*Postal Matters.* Judgments for debts or damages due the Post Office Department may be compromised by the Comptroller General with the written consent of the Postmaster General, and the Comptroller General may remit fines, penalties, and forfeitures levied according to the postal laws under rules prescribed by the Postmaster General and with the latter's written consent.<sup>13</sup> The Postmaster General may discharge from imprisonment any person confined on a civil judgment in favor of the Post Office Department if the debtor has no property of any description.<sup>13</sup> In relation to the remission, the Postmaster General need give no heed to legal actions taken in any case. At whatever stage of trial the case may be, the Postmaster General may act without reference to the legal questions involved or the question of the proper administration of the courts.

*Customs Cases.* The compromise of claims under the customs laws are made by the Secretary of the Treasury on the recommendation of the Solicitor of the Treasury similar to the compromise of claims in general in favor of the United States, to be discussed shortly.<sup>14</sup> It is made a felony for any officer of the United States other than the Secretary of the Treasury to compromise or abate

<sup>13</sup> Secs. 295, 409, Rev. Stat; act of June 10, 1921, c. 18, sec. 304, 42 Stat. L., 24; 3 Op. 684, 13 Op. 540, 14 Op. 179, 16 Op. 484, 18 Op. 277, 21 Op. 494, 4 Dec. Comp. Gen. 719.

<sup>13</sup> Sec. 410, Rev. Stat.

<sup>14</sup> Act of September 21, 1922, c. 356, Title IV, sec. 617, 42 Stat. L., 987.

any fine, penalty, or forfeiture under the customs laws;<sup>15</sup> but this provision does not interfere with the power of a court or a district attorney to discontinue or dismiss a suit against an accomplice who turns state's witness.<sup>16</sup>

*Internal Revenue Cases.* The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon; and with the advice and consent of the Secretary of the Treasury and the Attorney General, he may compromise such claims after suit is begun. The opinion of the General Counsel must be asked and filed in such case.<sup>17</sup> This provides for involved procedure and constitutes the Commissioner another officer of the government authorized to compromise suits, a function in its nature judicial and one most properly performed by the chief law officer.<sup>18</sup>

*Employees' Compensation Cases.* When the United States compensates an employee for injuries, the Civil Service Commission may require the employee to assign to the United States any rights he may have against third parties as the result of that injury. The resulting claims of the United States may be compromised by the Civil Service Commission.<sup>19</sup> Likewise, when the United States compensates any one injured or the relatives of any one killed in the Army or Navy of the United States, the director of the Veterans' Bureau, as a condition of compensation, must require the beneficiary to assign any right he may have against third parties to the United States. The resulting claims may be compromised by the Director.<sup>20</sup>

*United States Vessel Cases.* The United States permits suits in admiralty against merchant vessels owned by it and may sue for any injuries to vessels owned by the United States. Such suits either in favor of or against the United States may be compro-

<sup>15</sup> *Ibid.*, sec. 616.

<sup>16</sup> Act of January 22, 1875, c. 22, 18 Stat. L., 303. See also, 5 Op. 658; 20 Op. 727; 21 Op. 90, 101, 283, 289, 418, 549; 22 Op. 491; 24 Op. 583, 25 Op. 535.

<sup>17</sup> Sec. 3229, Rev. Stat.; act of February 26, 1926, c. 27, sec. 1201, 44 Stat. L., 126.

<sup>18</sup> See 12 Op. 472, 536; 13 Op. 479, 525; 14 Op. 8, 42; 16 Op. 41, 249; 17 Op. 213; 21 Op. 558; 23 Op. 507; 30 Op. 329; 31 Op. 459.

<sup>19</sup> Act of September 7, 1916, c. 458, sec. 26, 39 Stat. L., 747.

<sup>20</sup> Act of October 6, 1917, c. 105, sec. 2, 40 Stat. L., 408.



mitted by the secretary of any department of the government, the United States Shipping Board, or the board of trustees of any corporation having control of the vessel in question. The Attorney General is required to report annually to Congress cases under this act in which a judgment is rendered, and whoever compromises a suit must so report.<sup>21</sup> Compromises may be made very expeditiously under this section, too expeditiously for proper control by Congress and the prevention of dishonesty.

The United States also allows itself to be impleaded for damages caused by a public vessel or for services rendered to public vessels. This act is unique because it properly provides for compromises of claims. The Attorney General and not the Secretary of the Navy is authorized to arbitrate, compromise, or settle these claims. He is required to report to Congress annually all suits disposed of, either by judgment or settlement, under the act.<sup>22</sup>

*Immigration Cases.* The owner, agent, consignee, or master of any passenger vessel plying between a foreign port and a port of the United States who brings into the United States any alien employee who by reasonable inspection might have been ascertained to have been insane, epileptic, or tubercular, is liable to a fine. Such fines may be remitted by the Secretary of Labor.<sup>23</sup>

*Navigation Cases.* Until 1903 the control of vessels on the navigable waters of the United States was assigned to the Secretary of the Treasury, who was given authority to remit fines, penalties, and forfeitures under the laws relating to vessels.<sup>24</sup>

When the Department of Commerce and Labor was created it took over the Bureau of Navigation and the Secretary of Commerce and Labor was given all powers and duties of the Secretary of the Treasury relating to the remission or refund of fines, penalties, etc.<sup>25</sup> The power, now exercised by the Secretary of Commerce, has been extended as the control by the United States of navigation

<sup>21</sup> Act of March 9, 1920, c. 95, secs. 9, 12, 41 Stat. L., 527, 528.

<sup>22</sup> Act of March 3, 1925, c. 428, secs. 6, 10, 43 Stat. L., 1113.

<sup>23</sup> Act of February 5, 1917, c. 29, sec. 35, 39 Stat. L., 896.

<sup>24</sup> Rev. Stat. secs. 4146 as amended by act of January 16, 1895, c. 24, sec. 2, 28 Stat. L., 624; 5294 as amended by acts: December 15, 1894, c. 7, 28 Stat. L., 595, March 2, 1896, c. 37, 29 Stat. L., 39; acts: June 20, 1874, c. 344, sec. 13, 18 Stat. L., 128 as amended by act of March 3, 1897, c. 389, sec. 11, 29 Stat. L., 689; June 19, 1886, c. 421, sec. 9, 24 Stat. L., 81.

<sup>25</sup> Act of February 14, 1903, c. 552, sec. 10, 32 Stat. L., 829.

has been extended over different classes of vessels.<sup>36</sup> In some of these cases the Secretary is authorized to suspend prosecutions and to issue regulations to govern the officers of the United States in the enforcement of the acts in question. It appears that the law officer need not be consulted in relation to suspension of prosecutions. The proper administration of justice is no concern of the Secretary of Commerce, and useless prosecutions do not appear on his record. It does not appear, however, that the Attorney General allows any interference by the Secretary of Commerce with the district attorneys and marshals.<sup>37</sup>

*Fur Cases in Alaska.* Congress has provided for the regulation of the hunting of fur bearing animals on the high seas and in Alaska. The Secretary of Commerce has charge of sea animals, such as seals; and the Secretary of Agriculture of amphibious animals, such as beavers, muskrats, and others. Those who infringe the laws relating to these subjects are liable to fine or other penalty. The remission of fines, penalties, and forfeitures under these laws, formerly granted by the Secretary of the Treasury, may now be granted by the Secretary charged with the administration of the law in question.<sup>38</sup>

*Discharge of Poor Debtors.* In some states imprisonment for debt is still allowed. In such states persons indebted to the United States may in conformity with this practice be imprisoned. The Secretary of the Treasury is authorized to discharge such persons from imprisonment if they are unable to pay and the claim of the United States does not arise under the postal laws. The President may release those whom the Secretary of the Treasury is not authorized to release.<sup>39</sup> It is significant that the Secretary of the Treasury has assigned to the Solicitor of the Treasury the duty of investigating and making recommendations in cases arising under this and other provisions concerning fines, penalties, and forfeitures.

*In General.* With the exceptions noted above, claims in favor of the United States are compromised by the Secretary of the Treas-

<sup>36</sup> Acts: April 28, 1908, c. 151, sec. 4, 35 Stat. L., 69; June 9, 1910, c. 268, sec. 8, 36 Stat. L. 463; act of June 7, 1918, c. 93, sec. 4, 40 Stat. L., 602.

<sup>37</sup> Instructions to court officials, 1925, no. 203.

<sup>38</sup> Sec. 1958, Rev. Stat.; Acts: February 14, 1903, c. 552, secs. 7, 10, 32 Stat. L., 828, 829; March 4, 1913, c. 141, sec. 1, 37 Stat. L., 736; May 31, 1920, c. 217, 41 Stat. L., 716.

<sup>39</sup> See above, chap. v, note 59. Sec. 3472, Rev. Stat.

sure, upon the recommendations of the Solicitor of the Treasury.<sup>20</sup> For the compromise of civil suits under the immigration acts, the Secretary of the Treasury must have, in addition to the recommendation of the Solicitor of the Treasury, the consent of the court in which the suit is pending.<sup>21</sup>

The power of the President to remit fines, penalties, and forfeitures under the penal laws of the United States cannot be abridged by any statute. The provisions allowing other officers to make remission is, therefore, in addition to the power of the President. The language of the cases seems broad enough to include fines, penalties, and forfeitures under civil statutes and even the compromise of claims in favor of the United States.<sup>22</sup>

*The Attorney General and Compromises.* In addition to the other officers of the United States authorized to compromise suits, the Attorney General, who has general authority to control suits to which the United States is a party, may compromise suits if it appears to him that the ends of justice will be promoted. It would appear, also, that, as long as a case is before the court, the Attorney General may enter the proper motion and consent on behalf of the United States to the remission of fines, penalties, and forfeitures.<sup>23</sup>

From what has gone before, it is evident that the questions relating to the compromise of suits and the remission of fines, penalties, and forfeitures and the decisions involved are quasi-judicial. In some cases the facts are determined by the regular courts. In both the internal revenue and general cases of compromise, Congress requires the opinion or recommendation of a member of the Department of Justice. It is apparent that the reason for the failure of Congress to concentrate in the hands of one officer this very important power is that it believed that the officer charged with the general administration of the statute would be best able to decide on the cases. The fact that the courts

<sup>20</sup> Sec. 3469, Rev. Stat. See 12 Op. 543; 16 Op. 259, 385, 570, 617; 17 Op. 213; 18 Op. 72, 277; 19 Op. 344; 20 Op. 530, 685; 21 Op. 50, 264, 361, 494; 23 Op. 18, 507, 631.

<sup>21</sup> Act of February 5, 1917, c. 29, sec. 25, 39 Stat. L., 893.

<sup>22</sup> See Crim. Cod. sec. 327. *Osborn v. United States*, 91 U. S. 474 (1875) *The Laura*, 114 U. S. 411 (1885) and also *Ex parte Marquard* 2 Gall. (U. S.) 552 (1815); 4 Op. 573; 10 Op. 452; 19 Op. 344; 20 Op. 727; 21 Op. 264; 23 Op. 18.

<sup>23</sup> 22 Op. 491; 23 Op. 507.

would be called upon to enforce the penalties, fines, and forfeitures provided and that the Department of Justice would be most nearly concerned therein seems to have been overlooked.

The power to compromise suits and to remit fines, penalties, and forfeitures is one that is open to abuse. However judiciously it is exercised there is always likely to be charge of favoritism. Yet there are many cases where efficiency in administration renders it desirable that administrative officers shall have power to impose fines and penalties and declare forfeitures and, as a necessary consequence of this power, to exercise discretion in respect to when such fines, penalties, and forfeitures shall be remitted. If the administrative officer, in the exercise of his discretion, causes proceedings against a delinquent to be begun in court, a different situation is presented. Responsibility for the subsequent action is then shared with the Attorney General, if it does not wholly pass over into his hands. As has already been indicated, it is believed that in the latter cases, the power to remit should be exercised only by the Attorney General or at least only upon his approval. Congress should keep the exercise of this power under constant supervision. This can best be done by concentrating the power to compromise actions in one officer of the government, the Attorney General. Congress should require detailed reports from this officer.

**Enforcement Clauses of the Statutes.** The Department of Justice Act provides that the officers of the Department of Justice under the direction of the Attorney General shall give all opinions and render all legal services to the administration and conduct all suits in the Supreme Court and Court of Claims.<sup>61</sup> The Attorney General was authorized to exercise general superintendence and direction over district attorneys and to send any officer of the Department of Justice to attend the interests of the United States in any court.<sup>62</sup> Although the Attorney General in fact exercises quite effective control of all suits to which the United States or one of its officers is a party, the statutes regulating the enforcement of federal law and the protection of the interests of the government are so confused and complex that in the hands of clever lawyers they afford wide opportunity for delay. Nowhere is there a board

<sup>61</sup> Sec. 361, Rev. Stat.

<sup>62</sup> Secs. 362, 367, Rev. Stat.

general clause providing for the enforcement of federal law. Different clauses provide for methods of enforcement just different enough to require strict adherence to formula.

In some instances it is the duty of the Attorney General to "institute or cause to be instituted" a suit in behalf of the United States,<sup>35</sup> or he may "apply to the courts for the enforcement" of certain orders.<sup>36</sup> In other cases he must "cause proceedings to be commenced" for the enforcement of a certain act civil or criminal,<sup>37</sup> or "proceedings may be instituted under the direction of the Attorney General."<sup>38</sup>

Again, it is the "duty of the Attorney General, under the direction of the President," to enforce a certain act<sup>39</sup> or "by proper proceedings" to prevent infringement of certain acts;<sup>40</sup> or the Attorney General "may apply to the courts" to enforce an order of the Shipping Board.<sup>41</sup> He shall or may "commence proceedings" to enforce certain acts,<sup>42</sup> or he is "authorized and directed" to institute proceedings.<sup>43</sup> The Attorney General or his assistants are directed to "appear in the Court of Claims on behalf of the United States."<sup>44</sup> Again, upon application of the Attorney General, the

<sup>35</sup> Act of March 2, 1897, c. 363, sec. 5, 29 Stat. L., 619.

<sup>37</sup> Act of February 4, 1887, c. 104, sec. 16, 24 Stat. L., 384, as amended by acts: March 2, 1889, c. 382, sec. 5, 25 Stat. L., 859; June 29, 1906, c. 3591, sec. 5, 34 Stat. L., 590; June 18, 1910, c. 309, sec. 13, 36 Stat. L., 554; October 22, 1913, c. 32, 38 Stat. L., 219.

<sup>38</sup> Acts: March 3, 1887, c. 376, sec. 4, 24 Stat. L., 557 as amended by act of February 12, 1896, c. 18, 29 Stat. L., 6; August 1, 1888, c. 728, sec. 1, 25 Stat. L., 357; June 17, 1902, c. 1093, sec. 7, 32 Stat. L., 389; June 19, 1906, c. 3433, sec. 2, 34 Stat. L., 299; August 15, 1921, c. 64, sec. 404, 42 Stat. L., 168.

<sup>39</sup> Acts: September 19, 1890, c. 907, sec. 10, 26 Stat. L., 454; March 3, 1899, c. 425, sec. 12, 30 Stat. L., 1151 as amended by act of February 20, 1900, c. 23, sec. 2, 31 Stat. L., 32; March 23, 1906, c. 1130, sec. 5, 34 Stat. L., 85; June 21, 1906, c. 3508, sec. 5, 34 Stat. L., 386 as amended by act of June 23, 1910, c. 360, 36 Stat. L., 595.

<sup>40</sup> Act of March 3, 1887, c. 345, sec. 4, 24 Stat. L., 491.

<sup>41</sup> Act of August 7, 1888, c. 772, sec. 4, 25 Stat. L., 383.

<sup>42</sup> Act of September 7, 1916, c. 451, sec. 29, 39 Stat. L., 737.

<sup>43</sup> Acts: June 22, 1874, c. 414, 18 Stat. L., 200; July 10, 1886, c. 764, sec. 2, 24 Stat. L., 143; March 3, 1887, c. 376, sec. 2, 24 Stat. L., 556; June 25, 1910, c. 406, sec. 2, 36 Stat. L., 834. See also act of August 24, 1912, c. 390, sec. 11, 37 Stat. L., 566.

<sup>44</sup> Act of February 19, 1903, c. 708, sec. 1, 32 Stat. L., 847, as amended by act of June 29, 1906, c. 3541, sec. 2, 34 Stat. L., 587.

<sup>45</sup> Jud. Cod. sec. 185.

court is authorized to issue a mandamus to enforce certain acts.<sup>44</sup> Certain forfeitures are to be "recovered by the Attorney General in the name of the United States,"<sup>45</sup> or certain goods "shall be forfeited to the United States by proceedings instituted by the Attorney General,"<sup>46</sup> or it is made the "duty of the Attorney General to enforce" certain forfeitures in equity.<sup>47</sup> Sometimes it is made the duty of the Attorney General to "institute and conduct" proceedings.<sup>48</sup> In practice the Attorney General seldom if ever conducts proceedings personally, but if any other counsel appeared for the government in actions under statutes with such clauses, an objection with some validity might be made to the introduction of evidence. Finally, the Secretary of War is authorized and directed, "through the Attorney General, to institute" certain proceedings.<sup>49</sup>

Often the Attorney General does not figure at all in the enforcement, according to the statute. The district attorneys are "to cause proceedings to be instituted and prosecuted,"<sup>50</sup> or they are to "institute proceedings"<sup>51</sup> or to "prosecute all offenses" or "vio-

<sup>44</sup> Acts: February 4, 1887, c. 104, sec. 20, 24 Stat. L., 386, as amended by acts: June 29, 1906, c. 3591, sec. 7, 34 Stat. L., 593; February 25, 1909, c. 193, 35 Stat. L., 649; June 18, 1910, c. 309, sec. 14, 36 Stat. L., 555; March 4, 1915, c. 176, sec. 1, 38 Stat. L., 1196, August 9, 1916, c. 301, 39 Stat. L., 441; March 1, 1913, c. 92, 37 Stat. L., 701; September 26, 1914, c. 311, sec. 9, 38 Stat. L., 722; September 8, 1916, c. 463, sec. 706, 39 Stat. L., 797, as amended by act of September 21, 1922, c. 356, sec. 318 (f), 42 Stat. L., 947.

<sup>45</sup> Act of August 7, 1888, c. 772, sec. 6, 25 Stat. L., 384.

<sup>46</sup> Acts: May 28, 1908, c. 211, sec. 3, 35 Stat. L., 424; August 9, 1912, c. 278, sec. 3, 37 Stat. L., 266; October 20, 1914, c. 330, sec. 6, 38 Stat. L., 743; October 2, 1917, c. 62, sec. 5, 40 Stat. L., 299.

<sup>47</sup> Act of March 3, 1887, c. 340, sec. 4, 24 Stat. L., 477.

<sup>48</sup> Acts: May 16, 1906, c. 2465, 34 Stat. L., 196, as amended by act of June 29, 1906, c. 3628, 34 Stat. L., 632; August 8, 1917, c. 49, sec. 9, 40 Stat. L., 267.

<sup>49</sup> Act of August 8, 1917, c. 49, secs. 1 and 4, 40 Stat. L., 253, 262.

<sup>50</sup> Sec. 838, Rev. Stat., as amended by act of February 27, 1877, c. 69, sec. 1, 19 Stat. L., 241; sec. 3492, Rev. Stat.; acts: March 1, 1875, e. 114, sec. 3, 18 Stat. L., 336; June 30, 1906, c. 3915, sec. 5, 34 Stat. L., 769; April 26, 1910, c. 191, sec. 5, 36 Stat. L., 332; August 23, 1916, c. 396, sec. 6, 39 Stat. L., 531; August 31, 1916, c. 426, sec. 5, 39 Stat. L., 674; September 21, 1922, c. 356, Title IV, sec. 604; 42 Stat. L., 984.

<sup>51</sup> Secs. 1982, 2232, Rev. Stat.; acts: June 22, 1874, c. 391, sec. 15, 18 Stat. L., 189, February 25, 1885, c. 149, sec. 2, 23 Stat. L., 321; March 2, 1893, c. 196, sec. 6, 27 Stat. L., 532, as amended by act of April 1, 1896, c. 87, 29 Stat. L., 85; June 29, 1906, c. 3592, sec. 15, 34 Stat. L., 601; March 4, 1907, c. 2939, sec. 3; 34 Stat. L., 1416, as amended by act of May 4, 1916, c. 109, sec. 1, 39 Stat. L., 61; May 30, 1908, c. 225, sec. 3, 35 Stat. L., 476; August 11, 1916, c. 313, sec. 15, 39 Stat. L., 481; August 10, 1917, c. 53, sec. 7, 40 Stat. L., 278.

lations."<sup>44</sup> Provisions like these are added to each act under which court proceedings are contemplated. There is also a general provision that district attorneys shall prosecute all delinquents for crimes and appear in all civil actions in defense of the United States or an officer thereof.<sup>45</sup> Occasionally special wording is used. District attorneys are to "take immediate cognizance" of certain offences<sup>46</sup> or to "file libels."<sup>47</sup> They may maintain suits in equity in the name of the United States,<sup>48</sup> or an action to abate a nuisance,<sup>49</sup> or proceedings for condemnation.<sup>50</sup> Certain officers of the United States are directed to notify the district attorney of infringements of the law "to the end that criminal proceedings may be taken,"<sup>51</sup> or they must transmit reports to the district attorneys "for the institution of proceedings."<sup>52</sup> It is the duty of district attorneys to "enforce the laws and to prevent the violation of law."<sup>53</sup> They must "appear on behalf of the United States,"<sup>54</sup> or "represent the United States."<sup>55</sup> Certain forfeitures may be recovered "at the suit of the district attorneys."<sup>56</sup> It is made the duty of district attorneys to "investigate and report" certain classes of cases to the district judge, who is required to dispose of them summarily.<sup>57</sup> Finally, district attorneys are required to "represent" the Indians in their districts whenever a case concerning them arises.<sup>58</sup> By comparing the above clauses with those that follow the district attorneys might claim independent control of cases arising under

<sup>44</sup> Sec. 1342, Rev. Stat., as amended by act of August 29, 1916, c. 418, sec. 3, 39 Stat. L., 654; sec. 2105, Rev. Stat.; acts: April 27, 1904, c. 1629, 33 Stat. L., 393; June 29, 1906, c. 3594, sec. 4, 34 Stat. L., 608; February 16, 1909, c. 131, sec. 12, 35 Stat. L., 622; June 25, 1910, c. 422, sec. 11, 36 Stat. L., 851; August 20, 1912, c. 308, sec. 10, 37 Stat. L., 318; February 5, 1917, c. 29, sec. 25, 39 Stat. L., 893.

<sup>45</sup> Sec. 771, Rev. Stat.

<sup>46</sup> Act of August 1, 1888, c. 727, sec. 1, 25 Stat. L., 355.

<sup>47</sup> Sec. 4618, Rev. Stat.

<sup>48</sup> Act of February 14, 1917, c. 53, sec. 20, 39 Stat. L., 907.

<sup>49</sup> Act of March 3, 1917, c. 165, sec. 14, 39 Stat. L., 1128.

<sup>50</sup> Sec. 3076, Rev. Stat.

<sup>51</sup> Act of March 3, 1899, c. 425, sec. 18, 30 Stat. L., 1153.

<sup>52</sup> Act of September 21, 1922, c. 356 Title IV, sec. 610, 42 Stat. L., 985.

<sup>53</sup> Sec. 2045, Rev. Stat.

<sup>54</sup> Act of February 15, 1893, c. 114, sec. 1, 27 Stat. L., 449; *ibid.*, sec. 2, as amended by act of August 18, 1894, c. 300, 28 Stat. L., 372.

<sup>55</sup> Sec. 4619, Rev. Stat.

<sup>56</sup> Sec. 4610, Rev. Stat.

<sup>57</sup> Sec. 4300, Rev. Stat.

<sup>58</sup> Act of March 3, 1893, c. 209, sec. 1, 27 Stat. L., 631.

the statutes cited above, and counsel appearing against the government might object if, in any case, the Attorney General found it desirable to have a counsel from the department try the case. It is not likely that the objection would be sustained but it could be made and be the subject of appeal.

Some statutes provide that the district attorneys shall appear to defend the interests of the United States and that copies of the petition in the case shall be sent to the Attorney General, for what purpose is not stated.<sup>60</sup> One clause provides that either the Attorney General or a district attorney may institute proceedings.<sup>61</sup>

Some statutes provide for what is usually the actual practice and what should be the universal provision. It is made the duty of the district attorneys to institute and prosecute actions "under the direction of the Attorney General,"<sup>62</sup> or "whenever the Attorney General shall direct,"<sup>63</sup> or "under the supervision and direction of the Attorney General."<sup>64</sup>

In two cases the Department of Justice has charge of the enforcement of acts. In one, the district attorneys are enjoined to prosecute vigorously certain actions which the Department conducts.<sup>65</sup>

There is no necessity for an enforcement clause like any that have been cited being attached to each enactment. A general clause providing for the enforcement of all criminal statutes and for the appearance on behalf of the United States in civil actions by the Attorney General, or such of his subordinates as he shall direct in such manner and under such regulations as he shall prescribe, would greatly reduce the physical volume of law as well as leave no excuse for delay on technical grounds.

<sup>60</sup> Acts: March 3, 1887, c. 359, sec. 6, 24 Stat. L., 506; May 17, 1898, c. 339, sec. 2, 30 Stat. L., 416; February 6, 1901, c. 217, sec. 2, 31 Stat. L., 760.

<sup>61</sup> Sec. 5311, Rev. Stat.

<sup>62</sup> Acts: February 4, 1887, c. 104, secs. 12, 16, 24 Stat. L., 383, 385 as amended by acts: March 2, 1889, c. 382, secs. 3, 5, 25 Stat. L., 858, 859; February 10, 1891, c. 128, 26 Stat. L., 743; June 29, 1906, c. 3591, sec. 5, 34 Stat. L., 590; June 18, 1910, c. 309, sec. 13, 36 Stat. L., 554; October 22, 1913, c. 32, 38 Stat. L., 219—July 2, 1890, c. 647, sec. 4, 26 Stat. L., 209—August 27, 1894, c. 349, sec. 74, 28 Stat. L., 570—February 17, 1911, c. 103, sec. 9, 36 Stat. L., 916—September 26, 1914, c. 311, sec. 10, 38 Stat. L., 723—April 10, 1918, c. 50, sec. 5, 40 Stat. L., 518—October 28, 1919, c. 85, Title I, sec. 2, 41 Stat. L., 306—*ibid.*, Title II, sec. 2, p. 308.

<sup>63</sup> Act of February 19, 1903, c. 708, sec. 3, 32 Stat. L., 848.

<sup>64</sup> Act of March 3, 1875, c. 130, sec. 8, 18 Stat. L., 401.

<sup>65</sup> Acts: March 3, 1899, c. 425, sec. 17, 30 Stat. L., 1153; February 18, 1922, c. 57, sec. 2, 42 Stat. L., 388.



## CHAPTER XI

### THE OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

Probably the most interesting duty of the Attorney General is to render opinions on matters of law affecting the administration of the national government. The broader questions involved in the exercise of this function will be discussed later. It is the purpose of this chapter to develop from the opinions of the Attorney General his interpretation of the law prescribing this duty.

**Opinions for the President.** In considering this function of the Attorney General to give opinions, the distinction between those rendered to the President and to the heads of departments must be observed. Section 354 of the Revised Statutes reads:

The Attorney General shall give his advice and opinion upon questions of law, whenever required by the President.

This section does not limit the duty of the Attorney General to the President. The broader provision of the Constitution<sup>1</sup> permits the President to require written opinions from the Attorney General, and none of the limitations that will be hereafter noted as applying to requests for opinions from the heads of the departments apply to requests from the President. Usually, however, when acting upon requests from the President, the Attorney General considers himself as acting in his "quasi-judicial" capacity; but this is not always the case.<sup>2</sup> The opinions rendered to the President are included, however, in the published volumes of the "Official Opinions," and they must be clearly distinguished from opinions rendered to the heads of departments;<sup>3</sup> for to some of the opinions rendered to the President, most of what follows in this chapter does not apply. The word "some" has been used

<sup>1</sup> Art. II, sec. 2.

<sup>2</sup> 23 Op. 364.

<sup>3</sup> *Ibid.*, See also 30 Op. 88.

because the Attorney General usually is not required to give to the President opinions differing in their essential character from those which he gives to the department heads. For instance, in his "Life of Caleb Cushing," Fuess commenting on an opinion entitled "The Equality of States," rendered in 1855, says, "No such 'extra judicial' opinion had ever before been rendered by an Attorney General."<sup>4</sup>

It seems that Section 354 of the Revised Statutes has been interpreted to permit those who cannot ask for opinions directly, especially the independent establishments, to receive opinions similar to the ones rendered to the heads of departments by sending requests to the President and having them referred by him to the Attorney General. The Civil Service Commission, for instance, may not request opinions from the Attorney General directly, but the President may require opinions from the Attorney General on questions submitted to him by that Commission.<sup>5</sup> Or the President by executive order may confer jurisdiction of certain classes of cases on the Attorney General, as for example the requirement that when there is a dispute between the Civil Service Commission and the head of a department or office as to whether, under the law, examination is required to obtain persons to fill certain positions and an agreement cannot be reached by conference between the head concerned and the Commission, then the Attorney General shall be asked to settle the controversy by rendering an opinion.<sup>6</sup> The President has directed the Attorney General to render an opinion to a subordinate in a department.<sup>7</sup>

**Opinions for Heads of Departments.** Section 356, Revised Statutes reads:

The head of any Executive Department may require the opinion of the Attorney General on questions of law arising in the administration of his Department.

The meaning of this section is ascertained by studying the various words and phrases which it contains as interpreted in the opinions

<sup>4</sup> *Op. cit.*, vol. II, p. 154. The opinion referred to does not appear in the "Official Opinions."

<sup>5</sup> 26 Op. 522; 28 Op. 431.

<sup>6</sup> Executive order of November 19, 1904; 25 Op. 493.

<sup>7</sup> 27 Op. 120.

themselves. Other sections of law<sup>8</sup> serve to modify to some extent the general provision above quoted; these will be noted in their proper connections. The words and phrases to be defined are: (1) Head, (2) questions of law, (3) questions, (4) arising, (5) in the administration, and (6) his.

The law governing the right of the heads of departments to require opinions has been construed very literally by the Attorney General.<sup>9</sup> Individuals may not ask for opinions for their private information;<sup>10</sup> nor may they request an opinion by way of appeal from the decision of a department head.<sup>11</sup> Requests for opinions may not come from a subordinate in a department or a Solicitor of the department who is nominally subordinate to the Department of Justice.<sup>12</sup> It was decided, for instance, that the Commissioner of Patents could not ask for an opinion to govern his action in a case of disbarment. His decisions are reviewable by the Secretary of the Interior, but the latter acts only after decision by the Commissioner.<sup>13</sup> Section 361 of the Revised Statutes does not permit a Solicitor attached to a department to ask an opinion of the Attorney General. Whatever the "direction of the Attorney General" means as used in that section, a Solicitor cannot apply directly for a review of his opinion; he must return his opinion to the head of the department to which he is attached. The latter might then request an opinion of the Attorney General on the same question submitted in the first instance to the Solicitor and enclose with his request the opinion of the Solicitor.<sup>14</sup> Nor is the request for an opinion from a board of which the Attorney Gen-

<sup>8</sup> Const., Art. II. sec. 2; Rev. Stat., secs. 354, 357, 358, 361; acts: September 24, 1789, c. 20, sec. 35, 1 Stat. L., 93; July 17, 1916, c. 245, sec. 30, 39 Stat. L., 382; June 7, 1924, c. 320, sec. 9, 43 Stat. L., 610.

<sup>9</sup> By act of June 7, 1924, c. 320, sec. 9, 43 Stat. L., 610, the Director of the Veterans' Bureau was placed on a par with the heads of departments in regard to opinions from the Attorney General.

<sup>10</sup> 2 Op. 531; 6 Op. 147.

<sup>11</sup> 6 Op. 289; 12 Op. 433.

<sup>12</sup> 1 Op. 211; 10 Op. 458; 14 Op. 21; 18 Op. 59.

<sup>13</sup> 20 Op. 608.

<sup>14</sup> 18 Op. 57, 59. Sec. 361, Rev. Stat. reads in part: "The officers of the Department of Justice, under the direction of the Attorney General, shall give all opinions and render all services requiring the skill of persons learned in the law necessary to enable the President and heads of Departments, and the heads of Bureaus, and other officers in the Departments, to discharge their respective duties."

eral is a member a request from the head of a department. The Attorney General, therefore, refused an opinion to the building committee of the Smithsonian Institution, of the corporation of which he is a member.<sup>18</sup> When an opinion was requested by the Commissioner of Indian Affairs, the Attorney General replied to the Secretary of the Interior.<sup>19</sup>

Because neither a committee nor either house of Congress is the head of a department, the Attorneys General have declined to answer, in the form of legal opinions, questions coming from those sources. Congressional committees have repeatedly been refused opinions;<sup>20</sup> and both houses of Congress have been turned away unadvised.<sup>21</sup> Attorney General Wirt was the first called upon to give a legal opinion to the House of Representatives. He declined, because he was not authorized to do so under the Judiciary Act of 1789. He suggested that Congress might enlarge his duties if it saw fit;<sup>22</sup> but this has never been done. The law governing the Attorney General in regard to opinions was reenacted in the Department of Justice Act of 1870 in substantially the language of the act of 1789. A house of Congress cannot circumvent the law by sending the request to the Attorney General with the endorsement of and in the form of a request from the head of a department.<sup>23</sup> Indeed, the Attorney General has refused to render opinions which were in fact for the advice of Congress, where the questions were submitted by the head of a department and were to be used to support a request for funds made by that head.<sup>24</sup>

While the Attorney General does not give "mere legal opinions" to Congress, he, like all other department heads, is required to supply Congress with information regarding the conduct of affairs in his department.<sup>25</sup> In a recently published volume of opinions, however, there appears an opinion which seems to deviate from this rule. The writer quotes the general practice of refusing

<sup>18</sup> 6 Op. 24.

<sup>19</sup> 20 Op. 220. See also 28 Op. 531.

<sup>20</sup> 2 Op. 500; 5 Op. 561; 6 Op. 326; 12 Op. 544; 14 Op. 17; 17 Op. 357; 20 Op. 383.

<sup>21</sup> 10 Op. 164; 12 Op. 544, 546; 14 Op. 17; 15 Op. 476; 17 Op. 324; 18 Op. 87; 20 Op. 702; 21 Op. 509.

<sup>22</sup> 1 Op. 335. See, however, 1 Op. 253, 25 Op. 422.

<sup>23</sup> 15 Op. 138; 18 Op. 187.

<sup>24</sup> 14 Op. 178.

<sup>25</sup> 6 Op. 326.

to render legal opinions to a house of Congress, cites all the previous cases of refusal, announces his adherence to those principles, and then proceeds to render a legal opinion for Congress in answer to a resolution asking for information.<sup>27</sup>

**Opinions Rendered Only on Questions of Law.** The head of an executive department may require the opinion of the Attorney General on *questions of law*. A question of law is raised when the head of a department is called upon to apply a particular act of Congress to a case that has arisen and he is in doubt as to the construction to be placed on the statute. "Law" does not mean rules promulgated by the head of a department. The Attorney General will not apply those rules to a particular case; law is involved only when a case arises and the question is raised as to whether the head of the department was authorized by the law to promulgate the rule. If the head of the department was authorized to publish the particular rule, its interpretation is not a matter for an opinion.<sup>28</sup> A matter left to the discretion of an officer, especially the question of expediency, is not a question of law upon which an opinion from the Attorney General may be asked.<sup>29</sup>

Questions of fact are not questions of law. The Attorney General is required neither to determine the facts in a particular case, to settle controverted questions of fact, to reconcile different statements of fact, nor to search the correspondence submitted to him in search of the statement of facts.<sup>30</sup> Some of the questions of fact submitted for determination by the Attorneys General but respectfully returned to their propounders are: whether certain persons are laborers,<sup>31</sup> the definitions of scientific terms,<sup>32</sup> the *desirability* of a particular contract,<sup>33</sup> whether evidence submitted proved in fact that certain sewer discharges had formed a particular obstruction to navigation,<sup>34</sup> the law of foreign countries,<sup>35</sup> patent

<sup>27</sup> 33 Op. 226.

<sup>28</sup> 18 Op. 521; 21 Op. 255; 25 Op. 183.

<sup>29</sup> 15 Op. 574; 20 Op. 702; 21 Op. 73, 509; 22 Op. 99; 26 Op. 421; 28 Op. 127.

<sup>30</sup> 1 Op. 346; 3 Op. 310; 6 Op. 326; 11 Op. 206; 14 Op. 55, 526, 536; 20 Op. 384, 461, 494, 530, 591, 697, 711, 740, 742; 21 Op. 454, 481; 25 Op. 231; 26 Op. 604; 14 Op. 45; 22 Op. 156; 28 Op. 239; 26 Op. 379.

<sup>31</sup> 20 Op. 487.

<sup>32</sup> 21 Op. 174, 179.

<sup>33</sup> 21 Op. 240.

<sup>34</sup> 21 Op. 594.

<sup>35</sup> 21 Op. 80, 377.

infringements,<sup>32</sup> whether fraud had been committed,<sup>33</sup> similarity of trademarks,<sup>34</sup> weight to be given evidence,<sup>35</sup> best method of prosecuting certain criminal cases over which at the time the Secretary of the Treasury and not the Attorney General had supervision,<sup>36</sup> business usage,<sup>37</sup> whether a contractor had acted in "good faith,"<sup>38</sup> and what constitutes promptness.<sup>39</sup> In other words, the Attorney General, who acts quasi-judicially when rendering opinions, will not decide matters that in the regular courts are left to juries.

As a judge renders decisions based on the briefs of counsel, so the Attorney General requires that full briefs must be presented when his opinion is desired. "Questions of law" means just what it says; the Attorney General renders opinions only when the facts are clearly stated and the questions he is to answer are specifically drawn up.<sup>40</sup> He is not required to do the work of both counsel and judge. Each department has its Solicitor and a staff of lawyers, who can be used to study the facts and prepare the briefs upon which the Attorney General will render his decision. If the request for an opinion is not accompanied by a clear statement of facts and formulated questions of law, the Attorney General sends the request back to its source with a polite note and the opinion that the request is not in good form.<sup>41</sup> In reading an opinion, therefore, it must be remembered that the Attorney General like the courts, is not writing abstract essays; he is deciding cases upon an agreed statement of facts and interpreting in the light of these facts certain specific points of law.<sup>42</sup>

**Questions of Law Submitted Must Relate to Actual Cases.** The Attorney General has held that *arising* as used in the statute means actual and present. A question of law propounded for the

<sup>32</sup> 21 Op. 97, but see 28 Op. 52; 32 Op. 145, 239, 541, 556, 563; 33 Op. 460.

<sup>33</sup> 21 Op. 129.

<sup>34</sup> 21 Op. 260.

<sup>35</sup> 21 Op. 58.

<sup>36</sup> 21 Op. 134.

<sup>37</sup> 21 Op. 255.

<sup>38</sup> 23 Op. 521.

<sup>39</sup> 28 Op. 47.

<sup>40</sup> 14 Op. 367.

<sup>41</sup> 5 Op. 626; 11 Op. 407; 14 Op. 36; 16 Op. 94; 18 Op. 487; 19 Op. 396, 465, 672, 696; 20 Op. 220, 249, 255, 258, 270, 493, 526, 640, 673, 699, 711, 724; 21 Op. 36, 179, 202, 220, 486, 506, 583; 22 Op. 85, 189, 342, 352, 477, 498; 23 Op. 92, 178, 472; 24 Op. 59, 102; 26 Op. 378, 609; 28 Op. 219, 394; 30 Op. 381; 32 Op. 270.

<sup>42</sup> 3 Op. 309; 10 Op. 267; 11 Op. 206.

consideration of the Attorney General must arise in an actual case that is pending and requires the decision of the one asking for the opinion." On a case that has been disposed of, the opinion of the Attorney General will have no effect and he will not render an opinion.<sup>41</sup> Like a regular court, the Attorney General does not render decisions that will be ineffectual or on questions that may never arise. His duty is confined to actual cases presently pending. "The Attorney General is not required to write abstract essays on any subject."<sup>42</sup> In recent years, however, although this limitation has been clearly recognized, several Attorneys General have been somewhat sophistic. Attorney General Bonaparte on one occasion, after citing a number of the opinions that limited his jurisdiction to actual cases, proceeded to advise the Secretary of the Treasury in regard to a course of action contemplated by him "in order that immediate notification might result in a change of existing practices which would render the contemplated action unnecessary."<sup>43</sup> In another case, Attorney General Wickersham engaged in rather nice distinctions. "This question is not one actually arising in the course of the business of your department, and I should perhaps refrain from giving an opinion upon a purely hypothetical question, according to the well-established rule of the department. But as you are dealing with the establishment of a policy, it is permissible to call your attention to the state of the law on the subject."<sup>44</sup>

**Questions Must Arise in the Administration of the Department Whose Head Requires Advice.** The phrase *in the administration*, as used in Section 356 of the Revised Statutes, must be interpreted in connection with Section 357.<sup>45</sup> Under the Judiciary

<sup>41</sup> 1 Op. 575; 9 Op. 422; 11 Op. 189; 12 Op. 433; 13 Op. 531; 14 Op. 191, 568; 19 Op. 332, 414; 20 Op. 251, 440, 465, 536, 583, 602, 615, 703, 728, 729, 738; 21 Op. 106, 109, 169, 178, 186, 201, 219, 240, 320, 437, 478, 506, 509, 510, 569, 583; 22 Op. 77, 85; 23 Op. 330, 582; 24 Op. 59, 118, 556; 25 Op. 96, 179, 369, 543, 584; 26 Op. 631; 27 Op. 49; 28 Op. 129, 239; 29 Op. 46, 99, 488; 30 Op. 316, 569.

<sup>42</sup> 3 Op. 39; 5 Op. 626; 15 Op. 138; 20 Op. 440, 588; 23 Op. 231; 28 Op. 596.

<sup>43</sup> 9 Op. 82.

<sup>44</sup> 27 Op. 37.

<sup>45</sup> 29 Op. 588; see also 19 Op. 678.

<sup>46</sup> 18 Op. 59. Sec. 357, Rev. Stat. reads: "Whenever a question of law arises in the administration of the Department of War or the Department of the Navy, the cognizance of which is not given by statute to some other officer from whom the head of the department may require advice, it shall be sent to the Attorney General, to be by him referred to the proper officer in his Department or otherwise disposed of as he may deem proper."

Act of 1789, the Attorney General was required to render opinions to the heads of departments on "any matters that may concern their departments."<sup>48</sup> Under this act, opinions could be asked for the guidance of the head of the department or any of his subordinates.<sup>49</sup> The Department of Justice Act and the Revised Statutes, however, reworded the law governing the Attorney General's duty to render opinions. As the law now stands, the request for an opinion in every case must come from the head of the department.<sup>50</sup> The Secretaries of War and of the Navy may obtain opinions not only for their own guidance but also for the guidance of any of their subordinates.<sup>51</sup> In case of the heads of the other departments, however, opinions requested from the Attorney General must be for the guidance of the head of the department in a matter which he himself and not one of his subordinates must decide.<sup>52</sup>

Some of the applications of the above rules to particular cases follow. The Attorney General refused an opinion to the Secretary of the Interior on a question presented to the latter by a railroad president, because the question was not one arising in the administration of the department and calling for a decision of the Secretary.<sup>53</sup> He refused to the Secretary of the Treasury an opinion for the guidance of a board of inspectors on a matter that could not come up for the Secretary's consideration but was finally settled by the board.<sup>54</sup> He, likewise, refused an opinion to the same Secretary for the guidance of the Board of Health of the District of Columbia because, although the Secretary of the Treasury was interested, the matter was determined finally by that Board.<sup>55</sup> The Secretary of the Interior could not get from the Attorney General an interpretation of a territorial statute, since that statute did not affect any duty which the Secretary had to perform.<sup>56</sup> He refused the Secretaries of both the Interior and the

<sup>48</sup> Act of September 24, 1789, c. 20, sec. 35, 1 Stat. L., 93.

<sup>49</sup> 10 Op. 122.

<sup>50</sup> Secs. 356, 357, Rev. Stat.

<sup>51</sup> 3 Op. 310; 18 Op. 59; 20 Op. 608; 21 Op. 174.

<sup>52</sup> 11 Op. 431.

<sup>53</sup> 18 Op. 77.

<sup>54</sup> 13 Op. 535.

<sup>55</sup> 19 Op. 695.



Treasury an opinion on a matter that could be determined only by the Civil Service Commission.<sup>38</sup> As stated above,<sup>39</sup> the Attorney General has refused to give opinions to the heads of departments for the information of either house of Congress or one of their committees, since the question raised required no decision on the part of the head of the department.<sup>40</sup> Since the appointment of Army officers is a presidential function, the law officer will not advise the Secretary of War in regard to matters affecting such appointments.<sup>41</sup> Since the Court of Claims and not the head of a department settles claims against the United States for breach of contract, the Attorney General is not required to render opinions to department heads on matters relating to claims with which they have no concern.<sup>42</sup> Questions which arise in the State Department concerning proposed treaties are addressed to the treaty-making power and do not arise "in the administration" of the Department of State, and are, therefore, not questions upon which the opinion of the Attorney General may be required.<sup>43</sup> All the above questions arose in the departments whose heads referred them to the Attorney General, but they did not arise "in the administration" of the departments.

The department heads, however, have not confined themselves to asking questions that affected the government but could not be settled by the Attorney General under this law. Some public spirited secretaries have come into office with the impression that the Attorney General would serve as an excellent counsel for any private individual who chose to ask them a question, however far removed that question might be from any matter in which the government was directly concerned. The Attorney General decided that such service on his part "would not only be gratuitous, but unauthorized."<sup>44</sup> He, therefore, refused to determine the rights of a patentee under a United States patent.<sup>45</sup> He told the

<sup>38</sup> 20 Op. 160, 312; 28 Op. 393, 431. But see above, note 7.

<sup>39</sup> See notes 17 and 18.

<sup>40</sup> 20 Op. 383.

<sup>41</sup> 32 Op. 221.

<sup>42</sup> 33 Op. 354.

<sup>43</sup> 19 Op. 598.

<sup>44</sup> 2 Op. 311; 3 Op. 368; 10 Op. 220; 14 Op. 191; 19 Op. 7, 556; 20 Op. 667, 724; 33 Op. 311.

<sup>45</sup> 1 Op. 575; 20 Op. 314.

Secretary of the Treasury that the question as to when a ship could hoist the American flag<sup>9</sup> or what was the effect on an American ship of its being rebuilt abroad<sup>10</sup> were not questions that arose "in the administration" of the Treasury Department calling for any decision on the part of its Secretary, but were purely questions of private rights that could be decided, if at all, only by the courts. Government contractors often seek to make use of the Attorney General as authoritative counsel, but they have not succeeded very well in having the department heads get opinions for them. When no interest of the United States is involved and no decisions need be made by the head presenting the question, the chief law officer does not render opinions. He will, however, advise a secretary whether he is authorized by law to sign a particular contract presented.<sup>11</sup>

It is often desirable to have answered those questions that the Attorney General cannot answer. The departmental law officers answer questions not only for subordinates in the various departments, but may be called upon also to answer any questions that the heads of departments may choose to propound. The Solicitors are in no way limited by law in their duty to give opinions and, therefore, may be required to answer any questions or perform any other legal service that may be desired in the departments.<sup>12</sup>

**Questions Must Arise in the Department of the Officer Requiring Advice.** The head of a department may require opinions from the Attorney General on questions arising in *his* department. In interpreting the various parts of the law regulating the duty of the Attorney General to render opinions, the word "his" must be defined. The chief law officer will not render opinions to a secretary on questions that do not clearly arise in his own department.<sup>13</sup> In one case a question was asked by the Secretary of the Treasury concerning a matter that had been settled by a Secretary of the Interior who had not asked the opinion of the Attorney General before the settlement. The Secretary of the Treasury considered that the Secretary of the Interior had acted illegally, and when the former was called upon to pay the money involved

<sup>9</sup> 9 Op. 355.

<sup>10</sup> 20 Op. 723.

<sup>11</sup> 20 Op. 463, 465, 500; 28 Op. 534; 29 Op. 293; 32 Op. 532.

<sup>12</sup> Sec. 361, Rev. Stat.; 18 Op. 57, 59; 20 Op. 609.

<sup>13</sup> 20 Op. 50; 27 Op. 38; 28 Op. 393, 431; 31 Op. 127.

in the settlement made by the latter, he requested an opinion of the Attorney General on the question of the legality of the settlement. The Attorney General answered that whatever may have been the law that governed the Secretary of the Interior, the Treasury had no discretion but to make the settlement awarded by the Secretary of the Interior, the question as to the legality of the action of the latter could be decided only on his own request.<sup>71</sup> In another case the Secretary of the Treasury asked questions regarding claims of certain Mexican citizens, but the Attorney General decided that those claims were matters for the consideration of the State Department and, therefore, were not properly the concern of the Treasury Department.<sup>72</sup> When the Postmaster General asked questions in regard to the redemption of War Savings Stamps, he was told that this was a matter arising in the Treasury Department.<sup>73</sup> When the head of another department trenches on the preserves of the Department of Justice, the definition of "his" may take on a somewhat amusing form. The other departments often have occasion to interest themselves in litigation, and they are tempted to encroach on the functions of the Attorney General. But when they ask his opinion how he should perform his duties, they are told to transmit the papers and the Department of Justice will take all the necessary actions.<sup>74</sup> Where several departments are interested in the same questions, all may join in a request for an opinion, and the Attorney General addresses his answer to all who join in the request.<sup>75</sup>

**The Giving of Opinions.** The Attorney General could not, of course, perform all the legal investigation connected with his opinions and be expected to do much else. He is permitted, therefore, to refer requests for opinions to his subordinates. The opinions of the subordinates bearing the written approval of the Attorney General have the same force as opinions rendered by the Attorney General himself. "Although [the Attorney General] may, under the Revised Statutes, section 358, refer the question to a subordinate for a written opinion, the action of the subordinate must be examined and approved to give it effect."<sup>76</sup>

<sup>71</sup> 20 Op. 178.

<sup>72</sup> 20 Op. 249.

<sup>73</sup> 31 Op. 235.

<sup>74</sup> 20 Op. 714; 21 Op. 134, 724; 25 Op. 543; 29 Op. 226.

<sup>75</sup> 29 Op. 303, 494.

<sup>76</sup> 21 Op. 174.

To summarize, the interpretation of the various words and phrases that make up the statute governing the rendering of opinions by the Attorney General, the following may be quoted from a letter of Attorney General Caleb Cushing to President Pierce: "The Attorney General is under no obligation to render an award, or determine a question of fact in cases referred to him; nor does an appeal to him lie from another department by any party assuming to be aggrieved by its actions, and seeking to have it reviewed; nor is he to give advice to heads of departments on matters which do not concern their departments, and in which the United States have no interest; nor is he authorized to give official opinions in any case not falling within the scope of his duties, so as to connect the government with individual controversies in which it has no concern, and with which it ought not to interfere; nor is he in general to give official opinions to subordinate officers of the Government; nor ought he to advise individuals in regard to any question of legal right depending between them and the Government." "

It has been stated several times that the Attorney General in rendering opinions considers himself as somewhat in the nature of a judicial tribunal. Since, the Attorney General when rendering opinions, acts in a quasi-judicial capacity, he considers that the inherent limitations to judicial powers apply to him.

In the first place, the principle of *stare decisis* governs the Attorney General when rendering official opinions. An Attorney General will abide by former decisions of his own and those of his predecessors in deciding analogous cases." This means more than would at first appear. When it is remembered, however, that the Attorney General is the public prosecutor as well as the "judge" of the administrative tribunal, the full significance of his adoption of this principle becomes apparent. At any rate, according to the statements of those connected with the government, both in and out of the Department of Justice, no person acting upon the advice of an Attorney General has ever been so much as brought into court for any acts done under the law as interpreted by the chief law officer.

Like a court, again, the Attorney General is not bound by *obiter* in former opinions:

<sup>7</sup> 6 Op. 326.

<sup>8</sup> 11 Op. 189; 21 Op. 24, 264; 24 Op. 53.

I find, on examining the opinion you refer to, that no question was asked of the Attorney General relating to the Indian country of Alaska. His references to the position of liquor dealers in the Indian country were *obiter* merely, and hence do not have the force and effect of an official opinion of this Department.<sup>79</sup>

**Refusal to Answer Judicial Questions.** There are many cases arising under the laws over which Congress has not seen fit to give the federal courts jurisdiction. This final determination rests with one of the administrative officers. In cases of this sort, private rights are often finally determined. More important, however, are the cases arising within the government where questions of jurisdiction of the various administrative officers have to be determined according to the law, but where there exists no forum among the regular courts for the determination of the questions. When the head of a department is called upon to decide such a case, he is under no obligation to take the advice of anyone, but he may take the advice of any person, layman or lawyer, whom he pleases. In general, however, the secretaries desire only the best explanation of the law that they can get, and the Attorney General has come to be looked upon as the authoritative expounder of the law within the administration, whose opinions as to the meaning of the law is always adopted. Although the heads of departments are under no obligation so to do, in practice they usually call upon the Attorney General to expound any controverted question of law that arises.

The Attorney General, in rendering opinions on questions submitted to him, has taken the attitude of acting in a judicial manner. It has been seen that he renders opinions on questions of law only when they are raised by actual cases. The cases must be actually pending before the one requesting the opinions so that his advice will have weight. Finally, the Attorneys General have considered that they expound the law only in cases in which the persons possess "no means of getting a controverted matter before the courts" and their jurisdiction is confined to those cases alone. Accordingly, they have refused to render opinions on "judicial questions" which would tend to bring the Department of Justice "into conflict with the courts."

The vessel "Teresita" had been condemned by a prize court in Florida. The Spanish ambassador asked for "a thorough

<sup>79</sup> 21 Op. 25.

revision of the case," and the Secretary of State requested the opinion of the Attorney General "as to the sufficiency of the grounds upon which the decree of Judge Marvin is based." The Attorney General refused to "officially give an opinion." Although it might be proper for the political branch of the government to mitigate the sentence if it thought that the judge had erred, it was not for the Attorney General "to sit in Judgment upon the legal proceedings."<sup>30</sup>

An injunction was issued against a naval commander. The Secretary of the Navy asked the Attorney General whether the Secretary and his subordinates were forced to respect this injunction. Because the records before him were not complete and because it was a matter before the courts, the Attorney General suggested that the proper method to determine the question was a vigorous prosecution in the courts.<sup>31</sup>

The Secretary of the Interior is the guardian of the Indians. He asked the Attorney General to define certain fishing rights of the Indians so that he could take the proper actions to guarantee them in the enjoyment of those rights. The matter was not then in litigation but the Attorney General declined the opinion, writing, "The matters . . . are clearly justiciable in the appropriate courts. . . . They are essentially judicial in character," and are, therefore, not questions left to the determination of an administrative officer, upon which the opinion of the Attorney General could be required."<sup>32</sup>

An express company was carrying lottery tickets which had formerly been carried by the mails. The Postmaster General asked the Attorney General whether the law was being violated. The latter replied that the "question is essentially judicial in character" and advised the Postmaster General to bring the proper proceedings in court to obtain an interpretation of the law."<sup>33</sup>

<sup>30</sup> 10 Op. 347.

<sup>31</sup> 11 Op. 407. Likewise in 13 Op. 160; 23 Op. 221, 585; 32 Op. 472; and 33 Op. 473, the cases were before the courts and the Attorney General refused opinions.

<sup>32</sup> 19 Op. 56.

<sup>33</sup> 19 Op. 670. Similarly the following were declared judicial questions: In 20 Op. 277, the right to tax certain Indian lands; a test case was advised. In 20 Op. 314, the right of certain Indians to construct an irrigation dam; the case was "judicial in character." In 20 Op. 383, the construction of railroad land grants. In 20 Op. 673, whether building, loan, and savings associations might use the word "national" as part of their title. See 20 Op. 702. In 21 Op. 558, "whether the statute of limitation does or does

Certain prints had been made of one side of an American coin. The Secretary of the Treasury contemplated ordering the seizure of the pictures and asked whether a crime had been committed and whether the Secret Service could seize the pictures. The Attorney General answered, "Whether any given acts or practices constitute a crime are questions for the determination of the courts," and he, therefore, declined to give an opinion. Expressly declining to answer the first question, the Attorney General assumed that the act complained of was a crime, and declared that the Secret Service could *not* seize the articles."<sup>20</sup>

A sailor was convicted in Amoy and incarcerated in Shanghai, China. Three questions were asked of the Attorney General. The first question was whether the Secretary of State was authorized to pay for the keep of the prisoner from a certain fund. This question the Attorney General answered. The other two questions related to the jurisdiction of consular courts. These the Attorney General declined to "answer officially." Since the consul had, however, requested the opinion, the Attorney General did include in his opinion, presumably unofficially, the answers to the consul's questions.<sup>21</sup>

A paymaster's check had been raised and the raised amount paid by the assistant treasurer. Because of an irregularity by the paymaster, which of the two officers was liable was in question. The Secretary of the Treasury wanted to have the questions settled in anticipation of bringing action on the bond of the guilty officer. The Attorney General declined to answer the question submitted because, "I have reached the conclusion that the question before me is one that I cannot decide without stepping beyond the limits of my authority as Attorney General and invading those of the judicial department."<sup>22</sup>

The question of the conflicting rights of the United States and a street railway company in a street of Knoxville, Tennessee, was presented to the Attorney General. The Secretary of War desired

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not bar a claim on behalf of the Government is a judicial question." In 22 Op. 181, whether an action would be successful in court. A test case was advised. 25 Op. 94 is like 22 Op. 181. In 25 Op. 97, the liability of a postmaster is "essentially a judicial question."

<sup>20</sup> 20 Op. 210.

<sup>21</sup> 20 Op. 391.

<sup>22</sup> 20 Op. 524.

the answer so that he could, if possible, arrive at an amicable settlement between the United States and the railway. The Attorney General declined to give his opinion, using the following expressions: the questions are "essentially judicial questions," and "such questions are judicial in their nature."<sup>87</sup>

A state court had held an employee of a United States arsenal for jury service. The Secretary of War wanted to know whether the United States could legally contest this act. Attorney General Olney wrote:

. . . my predecessors have always exhibited great and, it seems to me, proper reluctance to pass upon any questions whose answer may bring this Department into conflict with a judicial tribunal.<sup>88</sup>

Under the Immediate Transportation Act, the Secretary of the Treasury was authorized to waive certain requirements of a tariff law in his discretion if the common carriers interested gave bond. He asked the Attorney General to tell him what Congress intended that he should require the railroads to do; so that he could include such requirements as a part of the bond. The Attorney General answered this question; but as to what actions could be sustained on bonds already issued, that the Attorney General declared to be a "judicial question."<sup>89</sup>

The Secretary of the Treasury asked whether an employee of his department had a claim for additional compensation under the law for certain services rendered. Attorney General McKenna referred the Secretary to the Comptroller of the Treasury. On such matters "the Attorney General should not render opinions, especially in view of the fact that, if the matter is doubtful, it can be referred to the Court of Claims for authoritative decision."<sup>90</sup>

The Patent Office asked whether it had the right to issue letters rogatory, to be executed in Germany, and reciprocally, the German Patent Office letters to be executed in America. In a long opinion the Attorney General explained the nature of the letters rogatory and outlined all the cases and international correspondence in connection with them; but he declined to answer the questions pro-

<sup>87</sup> 20 Op. 539.

<sup>88</sup> 20 Op. 618. In 24 Op. 59, to this statement was added, "and this has been held to be an adequate reason for a refusal to give an official opinion."

<sup>89</sup> 20 Op. 369.

<sup>90</sup> 21 Op. 531. Quoted in 22 Op. 581.



pounded because they had to do with the jurisdiction of the courts and were, therefore, "judicial questions."<sup>24</sup>

The question was asked whether the willful refusal to give a true answer to census questions was punishable. The Attorney General answered:

Whatever the proper construction of these statutes may be, the punishment referred to could be inflicted in no other way than by proceedings in court. For that reason, the question is preeminently one for judicial and not executive determination.<sup>25</sup>

An American fishing vessel, the "Francis Cutting," was seized for illegal fishing in Canadian waters. The owners of the vessel asked the consul to have the crew sent to the United States as destitute seamen. The Attorney General agreed with the Comptroller of the Treasury that this was a proper charge against the appropriation fund in question. He also thought that the owners of the vessel should properly refund this money to the United States, but whether they were legally liable to the United States was a judicial question which the Attorney General could not be required to answer.<sup>26</sup>

The question was presented by the Secretary of the Treasury as to whether certain alcohol could be reclaimed under given circumstances. After nearly four months' delay in order to permit the filing of briefs by the interested parties, the Attorney General declined to answer the question. He declined, first, because the Treasury Department had already issued the orders prohibiting the reclamation and was satisfied with the legality of the action. As a second reason for declining, the Attorney General wrote:

It appears, moreover, that a proper determination of the questions presented can not be accomplished without considerable difficulty, and that the questions are essentially judicial in their nature. There is every reason to believe that if an opinion should be rendered sustaining the validity of the orders in question, parties interested would resort to the courts for the purpose of having the matter judicially investigated and determined. That it is not proper for the Attorney General to express an opinion upon a question which must ultimately be decided by the courts has been settled by numerous and unequivocal precedents.

<sup>24</sup> 24 Op. 69.

<sup>25</sup> 25 Op. 369.

<sup>26</sup> 26 Op. 631

As a third reason, he wrote :

In a letter to the President's Secretary in regard to this matter, which has been called to my attention, you state :

"The parties have their remedy in the courts, and they have been offered permission—pending the decision of the courts—to continue their business on the furnishing of bonds to pay the Government from this date, if the decision is sustained."<sup>28</sup>

The Secretary of the Interior asked the question whether "lands used for Indian schools but not within Indian reservations, may be considered as Indian country." The question was asked so that he could determine whether he could take steps to prohibit the sale of intoxicants in such territory. Attorney General Wickersham answered :

Your request raises what is essentially a judicial question: The enforcement of the act of January 30, 1897, must proceed through the courts. Whether or not a prosecution shall be commenced is a matter to be determined in any given case by the Attorney General. Your question therefore is not such as is considered to be one arising in the administration of your department, and I am obligated to reply that it would be improper for me to give you an official opinion upon it."<sup>29</sup>

The Secretary of the Navy submitted a list of questions about the movement of troops by railroad. In the first place, the law required advertisement for bids for troop movements. The Navy Department wanted to know if it could enter into a contract not to advertise for a definite period. The Attorney General answered in the negative, and, further, called the Secretary's attention to the fact that his department had been violating the law for ten years. In answer to questions as to whether the Navy Department was authorized to enter into contracts with railroads to carry soldiers at less than tariff rates and to have troop movements directed by a common agent, the Attorney General said that nothing in the law prevented the department from entering into such contracts, but whether such contracts could be enforced in the courts was a judicial question upon which the Attorney General could not render an official opinion."<sup>30</sup>

<sup>28</sup> 28 Op. 596.

<sup>29</sup> 29 Op. 226.

<sup>30</sup> 30 Op. 381.

The question was asked whether, if he considered the objection raised sufficient, the Secretary was required to give a hearing to a person who sought to obtain the privilege of appearing as attorney for claimants before the Treasury Department. Since the Secretary was given full discretion, unless he acted arbitrarily in any case, whatever course he might pursue would be final. The Attorney General, therefore, advised the Secretary that the law required a hearing only for those who, having been admitted to practice, were charged with acts the penalty for which was disbarment; but whether the courts could review as to its sufficiency the evidence upon which the Secretary acted in the disbarments was a judicial question which the Attorney General could not answer."

On one occasion when the Assistant to the Attorney General was in charge of the Department of Justice during an extended absence of his superior, he declared that the United States Court for China did not have jurisdiction in certain naturalization cases.<sup>m</sup> The Attorney General, however, was soon called upon to withdraw this one infraction of a time-honored rule of the Department of Justice. He wrote:

My predecessors have repeatedly refused to pass upon any question whose answer might bring this Department "into conflict with a judicial tribunal." An answer has been declined to a question which might bring the Department into conflict with the decision of a state court (20 Op. 618); where the question involved had not been judicially determined, but was the subject of a pending suit (23 Op. 221; 23 Op. 585); where the question was preeminently for judicial determination although not the subject of a pending suit (19 Op. 56; 24 Op. 69, 74); and, *a fortiori*, where the court has already passed upon the question (24 Op. 59; 32 Op. 472).

In accordance with these views, with which I am in full sympathy, I must decline to pass upon the jurisdiction of the United States Court for China to decree either the adoption or the legitimation of George Feuerbach. It follows that the opinion expressed in 32 Op. 162, that no jurisdiction has been conferred upon the United States Court for China to enter a decree of adoption or legitimation, is herewith superseded and withdrawn."

<sup>m</sup> 33 Op. 18.

<sup>n</sup> 32 Op. 162.

<sup>o</sup> 33 Op. 86.

The tariff act of 1922<sup>100</sup> forbade the Secretary of the Treasury to change a ruling in a customs matter without the authority of an opinion of the Attorney General or the decision of a court. Desiring to change a ruling, the Secretary submitted a case and question for the opinion of the Attorney General. The latter declined to give the opinion, writing:

I am advised that litigation involving the construction of these two paragraphs is now pending before the Board of General Appraisers. . . . It has long been the policy of this Department to decline rendering an opinion, except possibly under unusual circumstances not present here, on a matter which is the subject of judicial investigation.<sup>101</sup>

The authority of the opinions of the Attorney General and the judicial nature of his office will be discussed elsewhere. The rather extended consideration given here to the nature of the judicial questions upon which he declines to render an opinion will then be of service. Before leaving the subject now, it is desirable to consider how well the Attorney General succeeds in keeping within the jurisdiction which he has defined for himself. The fact that the Attorney General serves in two capacities must be borne in mind. He is the attorney of the United States as well as a quasi-judicial officer. It has been suggested that the distinction taken between the official opinions as quasi-judicial in their nature and unofficial advice given as chief counsellor of the government is immaterial. It is quite true that those who receive advice often fail to distinguish between the two functions. The Attorney General often finds it necessary to advise very extensively on judicial questions simply as a counsellor. That his advice of this nature sometimes proves to be erroneous is to be expected and, as has been mentioned before, the official opinions rendered to the President are sometimes incorrect.<sup>102</sup>

With respect to the official opinions rendered to the heads of the departments, however, few of the cases in connection with which they have been rendered have come before the courts and in fewer still have the courts done otherwise than disclaim jurisdiction.<sup>103</sup> It is

<sup>100</sup> Act of September 21, 1922, c. 356, sec. 502 (b), 42 Stat. L., 967.

<sup>101</sup> 33 Op. 510.

<sup>102</sup> 30 Op. 88.

<sup>103</sup> *Decatur v. Paulding*, 14 Peters (U. S.) 497 (1840).

safe to say, however, that many more of the cases *might* have gone into the courts but did not, and cases similar to those decided by the Attorney General have been decided by the courts contrary to his opinion. It must be concluded that the Attorney General has not succeeded in confining himself to cases that except for his opinion *could* not have received an authoritative interpretation. It is clear, however, that he has attempted to so confine himself and has succeeded in this attempt as well as any other court of limited and special jurisdiction.

## CHAPTER XII

### THE AUTHORITY OF THE OPINIONS OF THE ATTORNEY GENERAL

Though the office of the Attorney General has been in existence over 135 years and during all of that time one of his most important functions has been that of advising the President and the heads of departments in respect to the law, there is still lacking complete agreement in respect to the binding force of the opinion of that officer when rendered.

**Intention of Congress.** The extent to which Congress, in authorizing and directing the Attorney General to advise the President and the heads of departments in matters of law, intended that the advice when given should be binding upon the President or even the heads of departments is not made definite in the wording of the statutes imposing this duty upon the Attorney General. These statutes read :

The Attorney General shall give his advice and opinion upon questions of law, whenever required by the President (R. S. Sec. 354).

The head of any Executive Department may require the opinion of the Attorney General on any questions of law arising in the administration of his Department (R. S. Sec. 356).

Any question of law submitted to the Attorney General for his opinion, except questions involving a construction of the Constitution of the United States, may be by him referred to such of his subordinates as he may deem appropriate, and he may require the written opinion thereon of the officer to whom the same may be referred. If the opinion given by such officer is approved by the Attorney General, such approval indorsed thereon shall give the opinion the same force and effect as belong to the opinion of the Attorney General (R. S. Sec. 358).

The officers of the Department of Justice, under the direction of the Attorney General, shall give all opinions and render all services requiring the skill of persons learned in the law necessary to enable the President and heads of Departments and the heads of Bureaus and other officers in the Departments, to discharge their respective duties (R. S. Sec. 361).

Section 358, quoted above, seems to be the only section of law in which Congress considered directly the general effect of the opinions of the Attorney General. What effect Congress meant to give to the opinions by requiring the personal consideration of constitutional questions by the Attorney General and providing for rather formal indorsement of the opinion of subordinates to give them force, is hardly to be determined from the sections above quoted.<sup>1</sup> Nor may the intention of Congress be ascertained clearly in any other part of the statutes. The fact that the President may designate the head of no other department to act as Attorney General,<sup>2</sup> or that the Attorney General must be "learned in the law"<sup>3</sup> does not seem to give any indication of the intent of Congress as to the force to be accorded the opinions of the chief law officer within the administration.

In connection with only one class of cases has Congress given any clear expression of its intention with respect to the force to be given to the opinions. The Secretary of the Treasury may not reverse his own ruling or the ruling of one of his predecessors in a customs matter except on the recommendation of the Attorney General or as the result of a court decision<sup>4</sup> or the decision of the Customs Court.<sup>5</sup> In accordance with the maxim, *expressio unius exclusio alterius*, it may be argued that Congress intended to accord the opinions of the Attorney General such authority in no other class of cases. The more probable interpretation, however, is that the draughtsman of the act was giving expression to the usual course of procedure in the administration of customs matters.

Light on the congressional attitude toward the authority of the opinions is thrown by the discussion that took place when the bill providing for the creation of the Department of Justice was under discussion. In the course of this discussion, Mr. Jencks said:<sup>6</sup>

Whether the opinion of the Attorney General be right or wrong, it is an opinion which ought to be followed by all officers of the

<sup>1</sup> See 20 Op. 648.

<sup>2</sup> Rev. Stat., sec. 179.

<sup>3</sup> Act of September 24, 1789, c. 20, sec. 35, 1 Stat. L., 93.

<sup>4</sup> Act of March 3, 1875, c. 138, sec. 2, 18 Stat. L., 469.

<sup>5</sup> Acts of September 21, 1922, c. 356, sec. 502 (b) and (c), 42, Stat. L., 967; and May 28, 1926, c. 411, 44 Stat. L., 669.

<sup>6</sup> *Congressional Globe*, April 27, 1870, 41 Cong. 2 sess., vol. 42, p. 3036.

government until it is reversed by some competent court. It is for the purpose of having a unity of decision, a unity of jurisprudence, . . . in the executive law of the United States that this bill proposes that all the law officers therein provided for shall be subordinate to one head.

The head of a department may act according to his own judgment, with or without the advice of his solicitor, and contrary to the advice of the Attorney General. If he does, he is responsible to the President of the United States for what he does as head of a Department, and to nobody else. But we propose that if he takes advice at all, if he wishes to be fortified by the opinion of law officers, then he shall go to the fountainhead and receive the opinion of the chief law officer of the Government, and then act upon it or not, upon his own responsibility.

When the opinions come back to the Attorney General . . . they are to be executive laws for all the inferior officers of the government.

In the same discussion, Mr. Lawrence said: <sup>1</sup>

If, then, we would preserve uniformity in the legal opinions, which are to guide us in our international obligations, in our interstate obligations, in relation to our revenue upon which the state and the nation may be called to act, this bill is a necessity, and one that cannot be dispensed with. If the present system be continued, we will continue to have, as we have now, "confusion worse confounded."

Certainly enough has been said to demonstrate the necessity of this bill to secure uniformity of legal opinions given by the various law officers of the Government.

Finally, in 1924 a joint committee of Congress recommended:

In order, however, to prevent the possibility of misunderstandings and conflicts of jurisdiction, the committee feels that the final authority of the Attorney General in legal matters arising in the departments should be recognized by statute; and it believes Congress should provide that any opinion by the Attorney General upon a question of law arising in any executive department should be binding upon all departments of the Government.<sup>2</sup>

This recommendation may indicate an opinion that the opinions have now no such force as the intended statute would give them.

<sup>1</sup> *Ibid.*, April 28, 1870, p. 3066.

<sup>2</sup> Joint Committee on the Reorganization of the Executive Departments, Report, 68 Cong., H. doc. 356, p. 24.



Another construction that might be placed on this recommendation, however, is that it favors a declaratory act, giving statutory sanction and exactness to existing practice.

**Position of Attorneys General.** A study of the opinions of Attorneys General reveals that these officers have taken divergent positions in respect to the binding force of their opinions upon the officers to whom they have been rendered. Probably no Attorney General has handled this question more carefully than Caleb Cushing. In a letter to President Pierce, after having discharged the duties of his office for a year, he wrote, under the title of "Office and Duties of the Attorney General: ""

We have seen that the act establishing the office of Attorney General expressly imposed on him two classes of duties: first, to prosecute all suits in the Supreme Court in which the United States are concerned, and secondly, to give his advice and opinion in questions of law to the President and the heads of departments.

In the discharge of the second class of the above-mentioned duties, the action of the Attorney General is quasi judicial. His opinions officially define the law, in a multitude of cases, where his decision is in practice final and conclusive,—not only as respects the action of public officers in administrative matters, who are thus relieved from the responsibility which would otherwise attach to their acts,—but also in questions of private right, in as much as parties, having concerns with the Government, possess in general no means of bringing a controverted matter before the courts of law, and can obtain a purely legal decision of the controversy, as distinguished from an administrative one, only by reference to the Attorney General.

Accordingly, the opinions of successive Attorneys General, possessed of greater or less amount of legal acumen, acquirement, and experience, have come to constitute a body of legal precedents and exposition, having authority the same in kind, if not the same in degree, with the decisions of the courts of justice.

It frequently happens that questions of great importance, submitted to him for determination, are elaborately argued by counsel; and whether it be so or not, he feels, in the performance of this part of his duty, that he is not a counsel giving advice to the Gov-

\* 6 Op. 326, 333, 346. "Cushing's exhaustive analysis of the origin and duties of his position has been accepted by the later incumbents as constituting the authoritative statement on the subject." Feuss, *Life of Caleb Cushing*, vol. 11, p. 182. See 21 Op. 558 for reference to oral arguments and 28 Op. 596 for briefs.

ernment as his client, but a public officer, acting judicially, under all the solemn responsibilities of conscience and of legal obligation.

As the law now stands expounded by the Supreme Court, therefore, it is conceded that a head of an executive department of the Government, in the administration of the various and important concerns of his office, is continually required to exercise judgment and discretion. He must do this in construing the acts of Congress, under which he is from time to time required to act. If he doubts, he has a right to call on the Attorney General for counsel. In general, his duties are not merely ministerial. The Supreme Court will not entertain an appeal from his decision, nor revise his judgment, in any case where the law authorized him to exercise discretion or judgment. Nor can it by mandamus act directly upon the officer, and guide his judgment or discretion in the matter committed to his care in the ordinary discharge of his official duties. Any such interference would involve a confusion of constitutional powers, and produce nothing but mischief in the business of the Government.

While this discussion of his duties and functions has been taken by his successors as a guide for the conduct of the affairs of their department, Cushing's holding as to the binding force of his opinions given in the same letter, and to be adverted to presently, has not been the universal holding in the department either before or after its rendition. The Attorneys General have taken a number of views with respect to the force and effect of their opinions. William Wirt wrote :

In relations, at least, to questions of municipal law, it is understood that the heads of departments consider the advice of the law officer conclusive.<sup>30</sup>

Attorney General Butler held that his opinions were only advisory and could be ignored by the officer requesting them.<sup>31</sup>

Attorney General Johnson wrote :

. . . The act does not declare what effect shall be given to such advice and opinion, but it is believed that the practice of the govern-

<sup>30</sup> Letter of William Wirt to Hugh Nelson, Chairman of the House Judiciary Committee, March 27, 1818. Quoted in *Monthly Law Reporter*, (n. s.) vol. III. p. 376 (December 1850). The author of the article in the *Reporter* continues, "President and secretaries must, until the questions involved are definitely settled by the Supreme Court, abide by the decisions of their accredited legal advisers." See also, Kennedy, *Memoirs of William Wirt*.

<sup>31</sup> 3 Op. 368.

ment has invariably been to follow it. This has been done from the great advantage and almost absolute necessity of having uniform rules of decision in all questions of law in analogous cases—a result much more certain under the guidance and decision of a single department, constituted for the very purpose of advising upon all questions, and with supposed special qualifications for such a duty. In my opinion, this practice should be considered as law.<sup>12</sup>

Attorney General Crittenden held that his opinions were advisory only.<sup>13</sup>

Attorney General Cushing wrote :

. . . His opinions officially define the law in a multitude of cases, where his decision is in practice final and conclusive, . . .

Although the act, requiring this duty of the Attorney General, does not expressly declare what effect shall be given to his opinions, yet the general practice of the Government has been to follow it;—partly for the reason already suggested, that an officer going against it would be subject to the imputation of disregarding the law as officially pronounced, and partly from the great advantage, and almost necessity, of acting according to uniform rules of law in the management of public business: a result only obtainable under the guidance of a single department of assumed special qualification and official authority.<sup>14</sup>

In a later opinion, however, Cushing said :

I suppose it must be conceded that an opinion of the Attorney General is not conclusive,—that is, it is not compulsory on the President, or even on a Head of Department.

It is *inconvenient*, however, to have conflict of opinion between the Attorney General and a Head of Department; and that inconvenience is placed in the strongest light by the facts of this case, where the affirmative opinion of one Attorney General was disregarded by one Secretary, and a negative opinion of another Attorney General by the succeeding Secretary. There could be no more flagrant example of confusion of opinion and action.

A Secretary, undoubtedly, is entitled to have and act upon his conscientious opinion of a question, even after he has taken the opinion of the Attorney General; but the interest of parties and the credit of the Government require decision; and it would seem

<sup>12</sup> 5 Op. 97.

<sup>13</sup> 5 Op. 390.

<sup>14</sup> 6 Op. 326.

that any such conflict of opinion between the Secretary asking, and the Attorney General giving, official advice should be referred at once to their common superior, the President, in order that the particular question of administration itself may receive the authoritative decision of the Executive Government."<sup>7</sup> . . .

Attorney General Black held:

. . . The duty of the Attorney General is to advise, not to decide. A thing is not to be considered as done by the head of a department merely because the Attorney General has advised him to do it. You may disregard his opinion if you are sure it is wrong. He aids you in forming a judgment on questions of law; but still the judgment is yours, not his. You are not bound to see with his eyes, but only to use the light which he furnishes, in order to see the better with your own.

But though opinions from this office have technically no binding effect, it is generally safer and better to adopt them. Uniformity of decision in the different departments, on similar subjects, is necessary, and cannot be secured otherwise. For the same reason one Attorney General ought to be cautious how he differs from another who has gone before him."<sup>9</sup> . . .

Attorney General Brewster held that his opinions were merely advisory. With the rendition of the opinion his duty ended. He had no control over or interest in how the recipient of the opinion acted."<sup>17</sup>

Solicitor General Aldrich thought otherwise:

. . . But the law intended that the opinions of the Attorney-General should have *authority*, and this object can only be accomplished by confining them to questions strictly appertaining to executive administration."<sup>20</sup> . . .

Acting Attorney General Whitney held that Congress meant to give the opinions of the Attorney General "practical effect" when it enacted Section 358 of the Revised Statutes."<sup>20</sup>

<sup>7</sup> 7 Op. 692. This was the last of the opinions on the Des Moines Land Grant. This case represents one of the few instances in which a Secretary has refused to be bound by the opinion of the Attorney General. The affair was finally settled in accordance with this opinion.

<sup>9</sup> 9 Op. 32.

<sup>17</sup> 17 Op. 333.

<sup>20</sup> 20 Op. 383.

<sup>20</sup> 20 Op. 648.

Attorney General Olney was of the same opinion. He wrote:

. . . Congress's intention cannot be doubted that administrative officers should regard them as law until withdrawn by the Attorney-General or overruled by the courts, thus confirming the view which generally prevailed, though sometimes hesitatingly expressed, previous to the establishment of the Department of Justice.

Instances have recently come to my notice where official opinions of former Attorneys-General have been practically overruled by the Solicitor of the Treasury or administrative boards. These cases were probably due to inadvertence.<sup>20</sup> . . .

Attorney General Moody declared:

If a question is presented to the Attorney General in accordance with law—that is, if it is submitted by the President or the head of a Department—if it is a question of law and actually arises in the administration of a Department, and the Attorney General is of opinion that the nature of the question is general and important in other directions than disbursements, and therefore conceives that it is proper for him to deliver his opinion, I think it is final and authoritative under the law, and should be so treated by the accounting officers, even if the question involves a payment to be made.<sup>21</sup>

Attorney General Gregory held that on a question of the payment of salary to a recess appointee, his opinion would be advisory only to the Comptroller of the Treasury.<sup>22</sup>

**Position of Administrative Officers.** Though the records of administrative action are so kept that it is impossible to determine the extent to which administrative officers have followed or disregarded opinions of the Attorney General, the statement can be made that the cases are comparatively few where administrative officers have not accepted and acted upon such opinions.

So far as can be ascertained the Comptroller General is the only officer having to do with administrative affairs who generally declines at the present day to give practical effect to the opinions of the Attorney General. This will be discussed at greater length in the next chapter.

<sup>20</sup> 20 Op. 654, quoted with approval in *Smith v. Jackson*, 241 Fed. 747 (1917); affirmed 246 U. S. 388 (1918). See also 20 Op. 719.

<sup>21</sup> 25 Op. 302.

<sup>22</sup> 30 Op. 314. See also 30 Op. 376. It was in reference to an opinion of Mr. Gregory, 34 Op. 517, that the Supreme Court used such strong language in *Smith v. Jackson*, 246 U. S. 388 (1918).

Whatever may be their position in respect to the binding force of opinions of the Attorney General as a matter of law, the departments as a matter of fact, with rare exceptions, feel that they are under a moral obligation to follow them.

To prevent any departure from this practice during the World War, President Wilson, acting pursuant to authority conferred on him for such purpose,<sup>21</sup> issued an executive order<sup>22</sup> that all law offices of the government should "exercise their functions under the supervision and control of the head of the Department of Justice," and that "any opinion or ruling by the Attorney General upon any question of law arising in any Department, executive bureau, agency or office shall be treated as binding upon all departments, bureaus or offices therewith concerned. This order shall not be construed as affecting the jurisdiction exercised under authority of existing law by the Comptroller of the Treasury and the Judge Advocate General of the Army and Navy."

**Position of the Courts.** It is a general rule of the courts when interpreting a statute to accept as highly persuasive the interpretation placed thereon by the executive department charged with its administration. In arriving at such administrative interpretation, the courts refer to the opinions of Attorneys General as well as regulations of the departments concerned, and both are highly persuasive.<sup>23</sup>

In only one case, so far as the writer has been able to learn, has the Supreme Court gone on record as to the authority of opinions within the administration. In the case of *Smith v. Jackson* the Auditor for the Canal Zone, an administrative examiner of accounts subject to subsequent audit and settlement of the former Auditor of the Treasury for the War Department,<sup>24</sup> withheld a part of the salary of the district judge of the Canal Zone on account of quarters furnished and on account of excess leave. The Secretary of War had requested the opinion of the Attorney General as to whether such a stoppage could be made from the

<sup>21</sup> Act of May 20, 1918, c. 78, 40 Stat. L., 556.

<sup>22</sup> May 31, 1918.

<sup>23</sup> *Harrison v. Voss*, 9 Howard (U. S.) 372 (1850); *Denby v. Berry*, 263 U. S. 29 (1923); *The Three Friends*, 166 U. S. 1 (1896); see 13 Op. 177; and 40 *Harvard Law Review*, 469 (1927).

<sup>24</sup> Act of October 22, 1913, c. 32, 38, Stat. L., 209.

pay of the judge and the question was answered by the Supreme Court in the negative. In his decision Chief Justice White said:

. . . in 1915, the Secretary of War submitted to the Attorney General two questions: . . . the Attorney General . . . [replied] ". . . without specific authority no portion of the salary of an officer of the United States may be withheld . . ."

. . . this ruling should have put the subject at rest, . . . As the result of the action of the Auditor and the necessity for bringing the suit, the expense was occasioned the United States of calling a judge from the United States to hear the cause. . . . He did so, (and rendered a decision) stating the reasons which controlled him in an elaborate and careful opinion, making perfectly manifest the error of the action of the Auditor and his wrong in refusing to observe the ruling of the Attorney General in the premises. . . .

. . . we are of the opinion that it is obvious on the face of the statement of the case that the Auditor had no power to refuse to carry out the law, and that any doubt which he might have had should have been subordinated, first, to the ruling of the Attorney General, and second, beyond all possible question to the judgments of the courts below."

In the next chapter, cases on the lower federal courts following *Smith v. Jackson* will be discussed. Although the decision in that case does not seem to be in any way conclusive on the point, the lower courts seem to have considered *Smith v. Jackson* as authority for considering the opinion of the Attorney General as the administrative interpretation of the statute involved and the one which the courts would follow and the Comptroller General should have followed.

In considering the authority of the opinions of the Attorney General, the fact, discussed elsewhere, that the United States can appear in court in the usual case only under the supervision of the Attorney General must be borne in mind. In the cases in the lower federal courts, above mentioned, the appearance of special counsel to support the contentions of the Comptroller General had to be sanctioned by the Attorney General.

"*Smith v. Jackson*, 246 U. S. 388 (1918). The opinion referred to is 34 Op. 517. Attorney General Stone commented on this opinion as follows: "The Attorney General was called upon for an opinion by the governor of the Canal Zone as to the legality of withholding any part of the salary. He replied that the question was one for judicial rather than administrative determination, and that the claim as made by the Government was one that could only be enforced through proceedings in the courts."—34 Op. 162.

## CHAPTER XIII

### THE ATTORNEY GENERAL AND THE COMPTROLLER GENERAL

Most annotations of the federal statutes under those sections relating to the rendering of opinions by the Attorney General give considerable space to those opinions relating to the accounting officers of the government. Because of its importance and because a discussion of the connection of the Department of Justice with the accounting affairs of the government will serve to make clear at a number of points the work of the Department of Justice, it is thought desirable to follow the precedent set by codifications and devote some space to a consideration of the opinions of the Attorney General rendered to the President and heads of the departments interpreting statutes which the Comptroller General may also be called upon to interpret. In connection with such sections of law, the Attorneys General have developed limitations on their duty to render opinions in addition to these discussed above.<sup>1</sup> It is the purpose of this chapter to develop those limitations and discuss certain problems raised when an interpretation of law by the Attorney General is not agreed with by the Comptroller General.

As has been pointed out in the chapter immediately preceding, whatever may be the force of the opinions of the Attorney General from the legal standpoint, the administrative officers almost universally follow them as authoritative. The Comptroller General, since the creation of the General Accounting Office in 1921, declines to treat the opinions of the Attorney General as of more than persuasive force, and repeatedly takes action in complete disregard of such opinions. Whether the Comptroller General is an administrative or a legislative officer, is a much mooted question which is outside the scope of this work.<sup>2</sup> Similarly the question, whether the Comptroller General, whatever his status, should give the opin-

<sup>1</sup> Chapter XI.

<sup>2</sup> See W. F. Willoughby, *The Legal Status and Functions of the General Accounting Office* (1927), for a discussion of this problem.



ions of the Attorney General effect as determining the jurisdiction of the Comptroller General or the interpretation to be given to the statutes cannot be finally determined here. While the authorities to be cited will bear upon this controversy, the end sought is a picture of the Department of Justice at work rather than a conclusive discussion of a matter upon which there is bound always to be disagreement.

The law prescribing the duties of the Attorney General has been set out in full at the beginning of the preceding chapter. The significant portions fixing the powers and duties of the Comptroller General are:<sup>3</sup>

Disbursing officers, or the head of any Executive Department or other establishment not under any of the Executive Departments, may apply for and the Comptroller of the Treasury shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement.

\* \* \* \*

All powers and duties now conferred or imposed by the law upon the Comptroller of the Treasury or the six Auditors of the Treasury Department, and the duties of the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury relating to keeping the personal ledger accounts of disbursing and collecting officers, shall . . . be vested in and imposed upon the General Accounting Office and be exercised without direction from any other officer. The balances certified by the Comptroller General shall be final and conclusive upon the executive branch of the Government. . . .

All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office.

It will be seen that Congress has made provision for the rendering of opinions by two officers, the Attorney General and the Comptroller General. This gives rise to situations in which both

<sup>3</sup> Acts: July 31, 1894, c. 174, sec. 8, 28 Stat. L., 207; June 10, 1921, c. 18, secs. 304, 305, 42 Stat. L., 24.

officers feel called upon to render decisions regarding the same matter, and their opinions may not be in agreement. The problem is thus presented of determining which of these opinions should prevail.

**Rules Governing the Attorney General in Rendering Opinions in Accounting Matters.** Before going more particularly into the controversy, the rules which the Attorney General has developed and adopted to govern him in rendering opinions on questions which the Comptroller General might also be called upon to answer should be noted. While the Attorney General will not refuse to answer a question of law because it relates to accounting matters, he has adopted the rule that unless a question is very important and affects large interests of the government, the accounting officer is to be asked to render a decision and the Attorney General will decline to do so.<sup>4</sup> He will decline particularly to render opinions as to the appropriation fund to be charged with a certain expenditure. Such questions are peculiarly within the province of the General Accounting Office, whose decisions provide ample protection to the department heads.<sup>5</sup>

Some of the questions determined by the Attorney General to be within the peculiar province of the accounting office follow: Expenditure by the Secretary of War from the fund for "transportation of the Army and its supplies;"<sup>6</sup> from what fund the payment for certain blank forms was to be made;<sup>7</sup> allowance of extra compensation in lieu of annual leave to certain government employees;<sup>8</sup> whether an officer may be allowed an advanced rate of pay before the Senate has confirmed his promotion;<sup>9</sup> and whether payment may be made in advance for the use of a post office box.<sup>10</sup>

Before the creation of the General Accounting Office, when

<sup>4</sup> 21 Op. 178, 181, 530; 22 Op. 581; 23 Op. 1, 468; 24 Op. 553; 25 Op. 81.

<sup>5</sup> 20 Op. 279; 21 Op. 178, 188, 221, 405 (see also 423), 531; 22 Op. 581; 23 Op. 1, 2, 86, 437, 468, 586; 24 Op. 85, 553; 25 Op. 185, 614; 26 Op. 431; 28 Op. 129.

<sup>6</sup> 22 Op. 665.

<sup>7</sup> 25 Op. 50. See also 23 Op. 468, 586; 24 Op. 553.

<sup>8</sup> 24 Op. 85.

<sup>9</sup> 25 Op. 185.

<sup>10</sup> 25 Op. 614. This question had been decided by the Comptroller, and it was important in no other respect than disbursements. See also 28 Op. 129.

differences of opinion arose between the Comptroller of the Treasury and a department head, the Comptroller regularly requested the department head to ask the Attorney General to render an opinion on the points at issue. In such cases, when the questions were of sufficient importance, the Attorney General rendered his opinion.<sup>21</sup> For instance, the Secretary of the Treasury passed on to the Attorney General, with his endorsement, certain questions of the Comptroller of the Treasury concerning the status with regard to compensation of certain officers promoted by the President.<sup>22</sup> Again, a question arose concerning the payment for the installation of a rifle range in Porto Rico. At the suggestion of the Comptroller of the Treasury, the Secretary of War requested an opinion of the Attorney General and received it.<sup>23</sup> Occasionally the Attorney General has at first declined to render an opinion for lack of importance, and then when asked again by request of the Comptroller of the Treasury he has answered.<sup>24</sup>

Unless the chief accounting officer joins in a request for an opinion primarily fiscal, the Attorney General will hesitate to render it even in an important case. He will, however, not always decline to answer questions properly propounded to him because the Comptroller has not joined in the request.<sup>25</sup> The fact that the Comptroller has decided a matter will not deter the Attorney General if the question is of sufficient importance.<sup>26</sup> Before the Attorney General will render an opinion in review of the Comptroller's decision, however, he requires from the department asking his opinion, the reasons for the review.<sup>27</sup> Occasionally, the President has called on the Attorney General to review determinations of the Comptroller or to decide for the Comptroller's guidance a questions relating to appropriations.<sup>28</sup>

The relationship between the Comptroller of the Treasury and the Attorney General, just explained, was developed before the

<sup>21</sup> 21 Op. 181, 224, 402; 25 Op. 271, 301, 601; 26 Op. 81, 609; 30 Op. 314.

<sup>22</sup> 23 Op. 30. See also 23 Op. 161.

<sup>23</sup> 23 Op. 390.

<sup>24</sup> 21 Op. 188, 224.

<sup>25</sup> 24 Op. 669; 25 Op. 127; 26 Op. 81; 27 Op. 261. In this case the Attorney General differed with the interpretation of the Comptroller and the latter changed his decision. Files of Navy Department. 31 Op. 320; 32 Op. 427.

<sup>26</sup> 26 Op. 631.

<sup>27</sup> 26 Op. 609.

<sup>28</sup> 23 Op. 329; 26 Op. 247, 269, 336, 460; 28 Op. 466; 29 Op. 48, 51.

creation of the General Accounting Office. The Attorney General acted conservatively and always judicially, and when he did act the Comptroller usually accepted the Attorney General's interpretation of the law.<sup>19</sup>

**Circumstances Giving Rise to Conflict Between the Opinions of the Attorney General and the Comptroller General.** It has been seen that the Attorney General pursues the policy of refraining from rendering opinions regarding matters purely of accounting or the settlement of individual claims where no broad construction of law is involved. Cases, however, do arise where the point at issue is the construction of a statute having a general significance, and which involves usually the authority of administrative officers to take certain action and the binding force of such action when taken. On these cases, when of sufficient importance, the Attorney General feels it his duty to render an opinion when requested so to do by the President or the head of a department. If the Comptroller General refuses to accept the opinion of the Attorney General and himself renders an opinion contrary thereto, a clear issue is presented as to which of these opinions should govern in the conduct of public affairs.<sup>20</sup>

Since the creation of the General Accounting Office, the Comptroller General has seldom been induced to change his decision by an opinion of the Attorney General; indeed, no case has been found where the opinion of the Attorney General has caused a change of decision once rendered by the Comptroller General. The Comptroller General has insisted on his absolute independence of the administration, and it would seem that in some cases he has insisted on his interpretation of the law when the interpretation by the Attorney General was more convincing. It is known that

<sup>19</sup> See 14 Comp. Dec. 167; 27 Op. 221; 15 Comp. Dec. 584; 19 Comp. Dec. 617. It is to be noted that the opinion referred to in the last decision was rendered to the President. See also Hotchkiss, *Judicial work of the Comptroller of the Treasury*, p. 25.

<sup>20</sup> For a detailed study of the nature of the questions that the Attorney General is called upon to consider and the nature of administrative discretion consult: *Martin v. Matt*, 12 Wheaton 19 (1827); *Decatur v. Paulding*, 14 Peters 497 (1840); *United States v. Eliason*, 16 Peters 291 (1842); *United States v. Jones*, 18 Howard (U. S.) 92 (1885); *United States v. Johnston*, 124 U. S. 236 (1887); *United States v. Waters*, 133 U. S. 215 (1889); 2 Comp. Dec. 241; 4 *id.*, 587; 5 *id.*, 410; 14 *id.*, 143; 17 *id.*, 263; 20 *id.*, 69; 21 *id.*, 539. 17 Op. 339; 20 Op. 128; 25 Op. 302; 26 Op. 631.

one recent Attorney General has privately expressed a strong condemnation of some of the decisions of the Comptroller General which resulted in court action in which it was impossible for the government attorneys to adduce any support for the position of the Comptroller General.

Before considering the opinions of the Attorneys General rendered since 1921, it might be well to advert to an opinion rendered in relation to a controversy between the Comptroller of the Treasury and a department head.

The attitude of the Attorney General toward the relationship between the Comptroller of the Treasury and the department heads is well illustrated in an opinion of Attorney General Gregory rendered in 1915. A regulation had been promulgated by the Secretary of the Navy for the government of disbursing officers of the Navy. The Comptroller declared this regulation invalid. The matter was referred to the Attorney General, who held that the Secretary had ample authority to issue the regulation. In answer to the question "Is the order of the head of the Department which is clearly consistent with law binding . . . on the accounting officers of the Government?" he wrote:

. . . there is ample provision to prevent a situation such as suggested by the Comptroller, when he says that the pay officer might deliberately make illegal payments, knowing them to be such, or knowing that the rolls when certified were, in fact, incorrect.

These latter considerations deal entirely with the practical aspects of the case; and even if they were lacking, the legal propositions advanced herein would be none the less sound in principle, with the result that the regulation in question is not inconsistent with law; and that, as a valid order of the head of an executive department, it has binding force upon the accounting officers of the Government.<sup>21</sup>

Since the creation of the office of Comptroller General and the transfer to him of all the powers and duties of the Comptroller of the Treasury, sharp conflict of opinion has arisen as to the relative force of the conflicting opinions of the Comptroller General and the Attorney General.<sup>22</sup> The first conflict of jurisdiction

<sup>21</sup> 30 Op. 376. See also 31 Op. 320.

<sup>22</sup> An interesting theory as to the powers of the Comptroller General is set forth by O. R. McGuire in the *Illinois Law Review*, vol. xix, p. 523 (March 1925), and vol. xx, p. 455 (January 1926).

arose over a question submitted by the Secretary of War. In 1922 the Comptroller General issued regulations to the departments providing that transportation accounts, instead of being examined and paid by the disbursing offices of the departments as was the existing practice, should be certified to the General Accounting Office and paid there through direct Treasury warrants. The War Department contested the authority of the Comptroller General to issue any such regulations and sought an opinion of the Attorney General. This the Attorney General gave,<sup>22</sup> completely sustaining the position of the department. In his opinion the Attorney General, after stating the issue, said:

I am first called upon to consider whether or not I may properly render any opinion upon the question here submitted.

After reciting the provisions of the Budget and Accounting Act creating the General Accounting Office as an independent agency and conferring upon it all the powers and duties formerly possessed by the general accounting offices of the Treasury Department, he continued.

The above provisions declare the complete independence of the General Accounting Office. Such independence necessarily exists, however, only with respect to the powers and duties which the statute gives to the General Accounting Office. Notwithstanding the independent position of that office any order which extends beyond the authority given it by Congress is void. Therefore any order given by the General Accounting Office to the executive departments affecting the performance by them of executive functions independently confided to them necessarily involves a question of law which may be submitted to the Attorney General for his opinion.

My predecessors have frequently said that they would not review a question involving disbursements which had been passed upon by the Comptroller of the Treasury. The final authority of the Comptroller upon such an issue was based upon the provisions of section 8 of the Dockery Act of July 31, 1894 (28 Stat. 208), which provided:

"Disbursing officers, or the head of any executive department, or other establishment not under any of the executive departments, may apply for and the Comptroller of the Treasury shall render his decision upon any question involving a payment to be made by

<sup>22</sup> 33 Op. 383.

them or under them, which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement."

This section makes the ruling of the Comptroller of the Treasury (now the Comptroller General) conclusive as to particular payments to be made by and through executive departments. The present question does not involve a ruling upon particular payments to be made by and through an executive department, but it involves the duty of the executive departments to obey an order entirely prohibiting them from making payments of a general class which they are now authorized by law to make. I find nothing in section 8 of the Dockery Act, or in the Budget and Accounting Act of 1921 which deprives the head of an executive department of the right to have the opinion of the Attorney General upon such a question.

Having entertained jurisdiction, the Attorney General proceeded to examine and state the law governing the powers and duties of the disbursing officer in the departments and the superior authority of the heads of the departments over such officers, and reached the conclusion that:

. . . the Secretary of War would not be justified by reason of anything contained in General Accounting Office General Regulation No. 13 in failing to make, or in permitting or requiring disbursing officers under him to refrain from making, payment as now authorized by law of transportation obligations created by and under authority of the Secretary of War; nor would he be justified in omitting, or in permitting or requiring the omission of, the administrative examination now required by law to be made of disbursing officers' accounts of such payments prior to the transmission of such accounts to the General Accounting Office for settlement.

The War Department and certain other departments have acted upon this opinion of the Attorney General and they have refused to comply with the regulations of the General Accounting Office. Other departments, however, have complied with the regulations. To quote from the Annual Report of the Comptroller General for 1923: "

" P. 5. See this report for a statement of this case from the standpoint of the General Accounting Office and particularly the reasons for which the regulations were issued and the advantages claimed for the new procedure prescribed by them.

The situation now exists in practice that certain departments and establishments are faithfully following the prescribed procedure, while others are paying all bills for transportation services and still others are insisting upon the right to make all payments, are paying most of the bills rendered but forwarding other bills for direct settlement so as to enable this office to adjust overpayments made by them on bills which they insist upon paying, none of the protesting offices being consistent in observing either the decision of this office or the advisory opinion of the Attorney General.

Certain things should be noted regarding this opinion. The first is that the Attorney General expressly disclaims any authority on his part to review or revise a settlement of a claim by the Comptroller General, but he does assert the right to construe the law for the purpose of determining the scope of the powers of the Comptroller General. The second is that the Comptroller General has ignored this decision by continuing in force the regulations and has succeeded in having them observed at least in part. The Comptroller General has thus taken the position that it is proper for him to construe his own powers as well as to act finally upon the settlement of accounts.

The laws entrusted to the administration of a department are usually very technical and often susceptible of several responsible interpretations. Whichever interpretation is taken, it will often affect the appropriations. The attitude to be taken in interpreting laws and the effect of these interpretations on the Comptroller General have been stated by Attorney General Harlan F. Stone in a series of opinions rendered to the Secretary of the Navy.

. . . If the men so transferred were determined by the Secretary to be eligible under the rules and methods of computation existing at the time the transfers were made, and such rules and methods violated no statutory limitation, such transfers were legally made notwithstanding the fact that such persons would not have been eligible under changed methods of computation now in force. No change in the methods of computation of the length of service of an enlisted man who has been transferred to the Naval Reserve can affect the decision of the Secretary ordering his transfer.

. . . the organization of this reserve force, entrusted to the Secretary of the Navy, imposed upon him the duty of construing not merely the Act itself, but the application of that Act to all other Acts and regulations having the force of law, . . . Plainly, this



duty carried with it power to determine the qualifications under the law of each man who applied for enrollment in or transfer to the Reserve Force. . . .

. . . Length of service, therefore, is a mixed question of fact and law, and as presented to the Secretary in the vast number of cases which he was called upon to decide involved the exercise of his judgment upon numerous combinations of fact and circumstance, and the application to them of many provisions of law, some of which were by no means plain. . . .

I am of opinion, and so advise you, that when the Secretary has transferred a man to the Fleet Naval Reserve, his eligibility has been established in the only way provided for by the law; the act of the Secretary, in the absence of circumstances amounting to fraud, is final; and is conclusive upon everybody, including the Secretary himself and his successors in office.

. . . The law, . . . does not seize upon mere technicalities and unsubstantial trifles for the purpose of overruling the acts of executive officers performed in good faith in the administration of the vast and complicated operations of the Government of the United States, particularly to the prejudice of innocent persons who have acquired honorable status as a result of such acts.

. . . in every case where there was a real question to be decided, about which there was room for difference of opinion, I am satisfied that the rule of finality would govern, and the decision of the Secretary, once made, is conclusive.<sup>33</sup>

In a specific case arising in the Naval Reserve, the Attorney General said:

. . . nevertheless it was not so plainly contrary to both law and fact that the Secretary's . . . act in transferring Conway to the Fleet naval reserve should now be regarded not as an exercise of judgment but rather as an inadvertence.

. . . To hold otherwise, would be merely to substitute one man's opinion for another's upon what, at most, is a debatable question; and to overturn upon what would appear to one to be technical and unsubstantial considerations action taken in good faith by your predecessor, to the prejudice of an innocent man, who has acquired a status as a result of such action.<sup>34</sup>

Cases arose relating to the allowance of the cost of transportation to the dependents of naval officers ordered to a permanent change of station. The specific case presented the facts that an admiral had been ordered to his home from China to await orders

<sup>33</sup> 34 Op. 250.

<sup>34</sup> MS. Opinion of February 5, 1925.

and sometime later he was retired. The transportation of his wife had been paid.

. . . The Comptroller General allowed credit to the disbursing officer for the amount of the transportation furnished the dependants, . . . but . . . reopened the account and charged the disbursing officer with the amount expended. . . .

My opinion accordingly is requested on the question submitted in order that you may give proper instructions in the cases cited. . . .

While the question propounded involves the settlement of accounts, . . . it also involves other matters of law . . . and the opinion of the Attorney General . . . may be required.

The Secretary of the Navy, whose duty it was and is to administer the Act of May 18, 1920, as amended, in so far as the officers of the Navy and Marine Corps are concerned, interpreted said Act to permit the furnishing of transportation to officers' dependents when such officers have been detached from duty and ordered to proceed to their homes to await further orders. . . .

. . . It has long been an established rule of construction that when the meaning of a statute is doubtful the construction given it by the Department charged with its execution should be given great weight."<sup>33</sup>

I am not prepared to say the construction placed upon the Act by the Secretary of the Navy is erroneous or unreasonable. . . .

. . . an officer detached from duty and ordered to await further orders has been ordered to make a permanent change of station within the meaning of said Act, and . . . transportation of the officer's wife and dependent child or children must be furnished. . . ."<sup>34</sup>

It will be noted that all of these opinions were rendered in connection with controversies between a department head and the Comptroller General. Attorney General Stone found that the questions were sufficiently important to bring them within the exception to the general rule to refuse to answer questions affecting expenditures and the jurisdiction of the accounting officers. In none of them did the Attorney General advert to the effect of his opinion on the Comptroller General. It is known that the particular secretaries to which the opinions were rendered and their

<sup>33</sup> Citing: *Robertson v. Downing*, 127 U. S. 607 (1887); *United States v. Healy*, 160 U. S. 136 (1895); *United States v. Hermanos*, 209 U. S. 337 (1908); *National Lead Co. v. United States*, 252 U. S. 140 (1919).

<sup>34</sup> 34 Op. 346.

subordinates followed the opinion of the Attorney General, and in accordance with the well-established rule in the Department of Justice, the officers need never fear court action for so doing. Of course, the opinion of the Attorney General will not relieve a cabinet officer from political censure and impeachment.

In an interesting case Attorney General Stone expressed his opinion rather clearly as to the relationship between the Comptroller General and the heads of departments and his own duty in relation to controversies between them. Certain enlisted men of the Navy had been tried by summary court martial and sentenced to reduction in grade and forfeiture of pay. The sentence was immediately carried into effect by order of the senior officer present. The law permits a review by the Secretary of the Navy, who remitted the forfeitures. The Comptroller General, however, refused to allow credit to the disbursing officer for payment of the remitted forfeitures of pay. The Attorney General advised :

. . . the Secretary of the Navy . . . is given a reviewing power with discretion to . . . "remit or mitigate in whole or in part" any sentence which may have been imposed.

So long as you shall keep within this power the question of whether you have exercised your discretion wisely or erroneously is not subject to review by others, but your act is conclusive and the matter has become *res adjudicata*.

Congress having constituted you the final reviewing power, when you shall have acted and ordered the remission of forfeiture of pay. . . . your order in that respect . . . restores the original status of the man."<sup>20</sup> . . .

In other words, the right of restitution of what one has lost by the enforcement of a judgment subsequently reversed has always been recognized by the courts."<sup>21</sup>

. . . Therefore, when such a sentence shall be set aside and the record of the man ordered corrected to show such reversal or modification, he at once becomes entitled to receive that pay as though no sentence had even been passed. . . .

It is true that from time to time my predecessor has declined to express an opinion for the reason that the questions involved are left by law to the determination of the Comptroller of the Treasury, or, later, to the Comptroller General.

<sup>20</sup> Citing *Bank of United States v. Bank of Washington*, 6 Peters (U. S.) 8 (1832) ; *United States ex rel Harris v. Daniels*, Secretary of the Navy, 279 Fed. 844 (1922).

<sup>21</sup> Citing *Case of Morris's Cotton*, 8 Wallace (U. S.) 507 (1869).

These cases, however, involved merely matters of accounting.<sup>31</sup> . . .

For the reasons stated, I advise you that in all cases of trial and sentence by summary court-martial it is within your power to review the proceedings and sentence, and either to set aside or modify them as you may consider proper, and that when you have exercised your discretion in that respect your action is final. . . .

The sole duty of the Comptroller General in regard to such action is to be governed by it in adjusting the amount of pay to which the man is entitled.

As to the pay actually due in the respective cases, that must be left to the determination of the Comptroller General, subject to the affect of your action, and I . . . advise you that I do not deem it proper to express my opinion upon that subject.<sup>32</sup>

**The Comptroller General on His Jurisdiction.** The Comptroller General has interpreted the law creating his office somewhat differently.

Under the Employees' Compensation Act,<sup>33</sup> the Employees' Compensation Commission is endowed with wide discretion. In accord with the usual interpretation, the Commission included occupational diseases in the term "personal injuries."<sup>34</sup> The President requested the opinion of the Attorney General, and in an opinion reviewing the history of employees' compensation and the federal law applicable thereto, Acting Attorney General Seymour decided in favor of the interpretation of the Commission. The President presented this opinion to the Comptroller General, who replied:

. . . I have in mind . . . a recent opinion of the Attorney General to the Secretary of War<sup>35</sup> . . . unfortunately accepted by certain administrative offices, notably the Departments of War, Navy, Interior, and Agriculture, as sanctioning disregard of General Regulations . . . issued by this office, . . . and resulting in overpayments by disbursing officers. . . . Such overpayments are, of course, being worked out in the audit of the disbursing officers' accounts and charged back or otherwise recovered for the Government.

<sup>31</sup> Citing 33 Op. 265 as an example of these cases and 33 Op. 268 as an example of an important question on which the Attorney General rendered an opinion in spite of the fact that it involved disbursements.

<sup>32</sup> 34 Op. 162, citing *Smith v. Jackson*, 246 U. S., 388 (1918).

<sup>33</sup> Act of September 7, 1916, c. 458, 39 Stat. L., 742.

<sup>34</sup> 2 Comp. Gen. 6, 224.

<sup>35</sup> See 33 Op. 383, above note 23.

. . . should [the opinion of the Attorney General] be understood by the commission and its disbursing officer as authority for disregarding the decision of this office, [it] may result in large unauthorized expenditure of public funds on unlawful awards, recovery of which sums may prove most difficult, if not impossible. . . .

The opinion of the Attorney General as to a matter regarding which he may with propriety express opinion is entitled to most respectful consideration and great weight, but even such opinion is advisory and lacks the force of a judicial determination. Most infrequently have Attorneys General expressed opinion on a matter determinable by another official. . . .

In thus proceeding, the Congress recognized the determinative effect of the decision of this office . . . and is the most recent expression of the only authority to which there lies an appeal from the decision of this office. . . .

I am always pleased to consider most carefully the views of any interested branch of the Government in connection with any matter before me or in support of a proper request for reconsideration of action taken, but I may not accept the opinion of any official, inclusive of the Attorney General, as controlling of my duty under the law."<sup>2</sup>

The Compensation Commission followed the opinion of the Attorney General"<sup>3</sup> and Congress subsequently made the interpretation of the Compensation Act by the Commission conclusive."<sup>4</sup>

In another case, the Comptroller General was informed that the Secretary of the Navy had issued orders that the disbursing officers were to abide by an opinion of the Attorney General. The Comptroller General answered:

With reference to the statement in the concluding paragraph of the letter that "As the matter now stands, this department has no alternative but to obey the law as expounded by the Supreme Court and by the Attorney General," I have to advise that neither the Supreme Court nor the Attorney General has rendered an opinion in this case. Neither is the matter here involved proper for submission either to the Supreme Court or the Attorney General."

In another case, which involved again the Employees' Compensation Commission, the Comptroller General ruled adverse to

<sup>2</sup> 2 Comp. Gen. 784. President Harding died without having seen this letter.

<sup>3</sup> Employees' Compensation Commission, Annual Report, 1923, pp. 18-37; 1924, pp. 14-16; 1925, p. 1.

<sup>4</sup> Act of June 5, 1924, c. 261, 43 Stat. L., 389.

<sup>5</sup> 3 Comp. Gen. 772.

the contention of the Commission, although the latter had the support of an opinion of the Attorney General. In the opinion accompanying the ruling, the Comptroller said :

Careful consideration has been given the opinion of the Attorney General, referred to in your letter, *supra*, but I find therein nothing to require or justify any change in the former decision of this office on the question involved.

Whatever may have been the effect of opinions of the Attorney General on questions relating solely to the legality of proposed expenditures of appropriated moneys, prior to the enactment of the Dockery Act of July 31, 1894, 28 Stat. L., 205, the evident purpose and effect of said statute was to vest in the comptroller the exclusive jurisdiction and plenary authority to determine such questions. This is clearly indicated by the report of the joint committee which drafted the provisions of said act. See report as printed in House Report No. 637, 53d Congress, second session, in which it is stated that the duties of the comptroller will be "mainly to determine finally the construction of statutes," and that the act "will concentrate in one head all the legal direction in the settlement of accounts." In this connection attention is invited to the opinion of Attorney General Richard Olney, rendered May 22, 1895, 21 Op. Atty. Gen. 178, in which he declined to render an opinion on certain questions involving the legality of expenditures from appropriated moneys, referring to the fact that while such questions "prior to October 1, 1894 [effective date of the Dockery Act], could properly be asked of the Attorney General," they could now be submitted to the comptroller under the provisions of said act and that they "are questions which the comptroller, by his greater experience, is better qualified to pass upon, and it is desirable to avoid any possible conflict of precedents." This opinion was quoted from and followed by Attorney General Judson Harmon in an opinion of August 31, 1896, 21 Op. Atty. Gen. 405, in which he refused to express an opinion on the question there presented, stating:

"This is a question which may be asked of the Comptroller of the Treasury. (Act of July 31, 1894, C. 174, sec. 8.) It belongs to a class of questions which require for their decision a special knowledge of our appropriation acts and the course of decisions thereunder. . . ."

See also opinion of Attorney General Joseph McKenna, rendered May 6, 1897, 21 Op. Atty. Gen. 531, in which he said:

". . . It has been repeatedly held by Attorneys-General that on questions of disbursement of money or payment of claims, so by law relegated to the comptroller, the Attorney-General should not render opinions, . . ."

To the same effect is an opinion of August 10, 1922, 33 Op. Atty. Gen. 268, which concludes as follows:

"Section 8 of the Dockery Act of July 31, 1894 (ch. 174, 28 Stat. 207), provided that the balances certified by the auditors of the Treasury, or upon revision by the Comptroller of the Treasury, should be final and conclusive upon the executive branch of the Government, and that where disbursing officers, or the head of any executive department, applied to the Comptroller of the Treasury for his decision upon any question involving a payment, the decision, when rendered, should govern the case. Construing these provisions of law, my predecessors have uniformly held that a question of pay for the determination of the comptroller cannot be submitted to the Attorney General for his opinion merely because it may incidentally involve some power or the effect of some power claimed to exist in the head of a department. (See, for example, 25 Op. 301, 28 Op. 129.) The same rule necessarily applies to the Comptroller General, in whom is vested all power formerly conferred by law upon the Comptroller of the Treasury. (Act of June 10, 1921, ch. 18, sec. 304, 42 Stat. 20, 24.)

"I have the honor, therefore, to advise you that I do not deem it proper to express my opinion upon the question submitted by you."

Upon reconsideration my decision of October 29, 1925, must be and is affirmed.\*

**The Attorney General, the Comptroller General, and the Courts.** In many of the controversies between the administrative officers and the Comptroller General in connection with which the Attorney General is called upon for an opinion, there is no appeal to the courts. Only Congress can settle them. In a few cases, however, where the Comptroller General has withheld the salary of an individual to enforce his view of the law, the individual, often with the approval and aid of his superiors, has appealed to the court. In each of such cases, the court has taken the same view of the law as the Attorney General, and the Comptroller General has been obliged to comply.

It might be supposed that this is the result of the conduct of the cases by the Department of Justice; for the Comptroller General can appear in court only under the auspices of the Attorney General. While the Attorney General has exercised his discretion in the conduct of government litigation and declined to defend the Comptroller General in some cases and declined to take appeals in his behalf in others, in a few well-chosen cases, he has permitted

\*5 Comp. Gen. 688.

attorneys from the General Accounting Office to represent the Comptroller General and conduct the trial on behalf of the government. In none of the cases in which procedural difficulties have not been encountered have the attorneys for the Comptroller General been able to induce the courts to differ from the interpretation given the law by the Attorney General.

None of these cases have gone to the Supreme Court. Each of them, however, is based largely in the decision in the *Smith v. Jackson*,<sup>4</sup> discussed in the preceding chapter. While none of them clearly holds that the Comptroller General should accept the interpretations of the Attorney General, they all have adopted the interpretation of the Attorney General and have shown rather strong disapproval of the Comptroller General's position and have quoted the statement from *Smith v. Jackson* in which Chief Justice White said that the district judge wrote

. . . an elaborate and careful opinion making perfectly manifest the error of the Auditor and his wrong in refusing to observe the ruling of the Attorney General in the premises.

It should be observed that *Smith v. Jackson* came up from the district court of the Canal Zone. That court may issue an original writ of mandamus,<sup>5</sup> and did so in that case.

In cases in the regular federal courts writs of mandamus or injunctions have been sought against the Comptroller General or the administrative officers involved. The regular federal courts may not issue an original writ of mandamus, and this has prevented a decision on the merits in some cases.<sup>6</sup> An injunction has also been denied because the court was not convinced of its jurisdiction in the case.<sup>7</sup>

<sup>4</sup> 246 U. S. 388 (1918).

<sup>5</sup> Act of August 24, 1912, c. 390, sec. 8, 37 Stat. L., 565.

<sup>6</sup> *Hetfield v. Barber*, 2 F. (2d.) 723, 4 F. (2d) 245 (1925). The only federal courts which can issue original writs of mandamus are the courts of the District of Columbia. See *Kendall v. United States*, 12 Peters (U.S.) 524, 9 L. ed. 1181 (1838); *Ex rel. Margulies and Sons v. McCarl*, 10 F. (2d) 1012 (1926); *United States v. Schurg*, 102 U.S. 378, 26 L. ed. 167 (1880).

<sup>7</sup> *Emerson v. Baker*, 3 F. (2d) 830 (1925).



In some cases, however, mandamus has been issued,<sup>45</sup> and one circuit court of appeals has allowed the mandamus to stand.<sup>46</sup> In other cases no appeals were taken. In only one case were the courts of the District of Columbia appealed to. In that case an injunction was allowed restraining the Comptroller General from making certain deductions from the salary of a naval officer, and this decision was affirmed by the Court of Appeals of the District of Columbia.<sup>47</sup>

In this case, the Comptroller General was represented by his own counsel with the consent of the Department of Justice, which also allowed an application to the Supreme Court for a writ of certiorari. The Department of Justice, however, could not certify that it was thought that the lower court erred and was obliged to tell the court that, in its opinion, the position of the Comptroller General was not maintainable, so the Supreme Court refused the writ.<sup>48</sup>

From the relation of the Attorney General to government litigation, it may appear that the Comptroller General is at a disadvantage when court proceedings are begun against him or when he wishes proceedings begun by the United States. It has been said that it would be hard for the Attorney General to maintain in court a position in the correctness of which he did not believe. The Attorney General himself, however, seldom conducts a case, and the subordinate who might have been connected with the writing of an opinion involving an accounting matter would not be sent by the Department of Justice to argue for the Comptroller General in a case in which the Department of Justice is called upon to maintain a view contrary to the opinion. Finally, the Attorney General has shown no reluctance in allowing the counsel of the General Accounting Office to represent the Comptroller General. The Supreme Court, or Congress, however, has still to clarify the position of the Comptroller General in the government. In the meantime it appears that the Comptroller General will maintain a position of

<sup>45</sup> *Dillon v. Groos*, 299 Fed. 851 (1924); *Howe v. Elliott*, 300 Fed. 243 (1924); *Ware v. Alexander*, 2 F. (2d) 895 (1924); *Wylly v. McCarl*, 2 F. (2d) 897 (1924).

<sup>46</sup> *Ware v. Alexander*, *Wylly v. McCarl*, 5 F. (2d) 964 (1925). The Attorney General did not appeal this to the Supreme Court.

<sup>47</sup> *McCarl v. Cox*, 8 F. (2d) 669 (1925).

<sup>48</sup> 270 U. S. 652, 46 Sup. Ct. 351 (1926).

vigorous independence even of the Attorney General. The Attorney General will continue to render opinions in accounting cases and exercise his discretion in relation to cases to which the Comptroller General is a party. There the matter stands."

"In connection with a study of the General Accounting Office see W. F. Willoughby, *The Legal Status and Functions of the General Accounting Office*, also *Institute of Government Research, The General Accounting Office, Service Monograph, No. 46* (1927). In considering the exact extent of the Comptroller General's power in his controversies with the spending services, and the Attorney General, consideration should also be given to the power of the Attorney General and other officers to compromise suits, discussed in Chapter X, above. The cases cited in this chapter have to do with limitations on the powers of the Comptroller General under Sec. 1766, Rev. Stat., to withhold the salaries of disbursing officers. In a controversy with the spending services, the Comptroller General may take the extreme step of denying funds to the disbursing officer from which to make disbursements. In exercising this power, however, there may be an appeal to the Secretary of the Treasury, who may overrule the Comptroller General, Act of July 31, 1894, c. 174, sec. 12, 28 Stat. L., 209.



## PART II

### PROBLEMS IN THE ADMINISTRATION OF FEDERAL LAW

#### CHAPTER XIV

##### A JUDICIAL ADMINISTRATIVE BUREAU

Though the Constitution provided for a political system based upon the principle of the separation of powers, it recognized that the three great branches of government were but parts of a single piece of political machinery and that as such they should have intimate working relations with each other and, in certain respects, act as checks one upon the other. In practice the relations between the legislative and executive branches have necessarily been especially close. In the great field of administration, as distinct from the exercise of the executive powers of the President strictly considered, the situation is one where responsibility is divided. Congress sits as a board of directors to give orders to, and control, the administrative agencies; the President acts in the capacity of a general manager, drawing his legal authority as such from the statutes rather than the Constitution.

In a way that does not obtain as between the legislative and executive branches, the judicial branch was intended to be, and in fact has been, independent. This independence, however, has two aspects: independence in respect to the exercise of the judicial function, properly speaking, and independence in respect to the operation of the judicial machinery through which this discretion is exercised. The second phase is a matter of administration, involving questions of efficiency and economy in the same way as does the administration of the other two branches of the government. The distinction between these two phases raises the important question of the extent to which the officers of the courts constituting the judicial branch shall be subject to administrative direction, supervision, and control and, if so subject, in what agency or organ such superior authority shall be vested.

Congress in the first instance exercises the authority to prescribe the judicial organization and personnel and to determine the funds that shall be granted for the support and operation of this organization. Following this, it is open to Congress to set up within the judicial branch an agency for the supervision of the conduct of the administrative affairs of the courts, or to vest such responsibility in an agency of the administrative branch. In point of fact, it has adopted the second alternative and has vested in the Department of Justice large powers of direction and control over the conduct of the affairs of the courts in respect to the manner in which they conduct their business operations. The direction and control of the district attorneys and marshals does not fall within this category, since they are officers of the Department of Justice and not of the judicial branch, even though for certain purposes they are referred to as officers of the court. It is otherwise, however, in respect to the clerks and their deputies and assistants. They are officers of the court. Yet Congress has provided that the Department of Justice may direct them in the performance of purely administrative duties. The Department of Justice, thus, is in many respects the organ of general administration of the judicial system.

It is hardly necessary to say that this system is one that is not always cheerfully acquiesced in by the courts, which have in many cases failed to cooperate with the Department in the performance of its duties even if they have not actively hampered its efforts. The problem of the relation of the Department of Justice to the administration of the business affairs of the courts is, thus, an important one and merits special attention.

In view of this difficulty on the part of the Attorney General to exercise effectively his powers of direction and control over the business operations of the courts, the question is presented as to whether these powers should not be vested in an agency of the judicial branch specially created for the purpose. This is the position taken by the legal fraternity as represented in various organizations, particularly the American Bar Association, a committee of which reported in 1909:

Supervision of the business administration of the whole court (*i. e.*, a unitary court embracing all the judicial tribunals of the state) should be committed to some one high official of the court

who would be responsible for failure to utilize the judicial power of the state effectively. He should have power to make reassignments or temporary assignments of judges to particular branches or divisions or localities as the state of judicial business, vacancies in office, illness of judges or casualties may require. Likewise he should have the power, subject to general rules, to assign or transfer causes or proceedings therein for hearing or disposition according to the condition of the docket for the time being, and it should be his duty to see to it that the energies of the judicial department are employed fully and effectively upon all business in hand.

One need but read the Journal and other publications of the American Judicature Society to appreciate the strong feeling that now exists among those interested in legal reform for the creation within the judicial branch of the office of general business manager, to be presided over by the chief justice of the state and to have general direction, supervision, and control of the business affairs of the courts. A beginning in this direction has been made by the enactment of laws in a number of states providing for a judicial council, presided over by the chief justice of the state, to which are entrusted some of the powers of such an office. In the federal government action has been taken by the passage of the act of September 14, 1922,<sup>1</sup> which provides for the conference of senior circuit judges under the chairmanship of the Chief Justice of the Supreme Court. Though the functions of this body consist primarily in the assignment of judges in order to equalize the load of work as between the different courts and districts and to consider improvements in judicial procedure, its creation affords an agency that can be made use of for general administrative purposes. If this is done the council will have to be provided with a permanent administrative organization and staff.

For this purpose an administrative bureau should be established with a competent administrative officer at its head who, under the general supervision of the Supreme Court or the Chief Justice, would conduct the administrative affairs of the entire judicial branch of the federal government. The administrative examination of the accounts of the court clerks, commissioners, referees, and receivers should be made by a force of examiners acting under the

<sup>1</sup> C. 306, sec. 2, 42 Stat. L., 838. See Frankfurter and Landis, the judicial conference, 40 *Harvard Law Review* 431.

Judicial Bureau instead of the General Agent of the Department of Justice. The supervision of the newly created probation system in the federal courts might well be a matter for transfer to the Judicial Bureau. The determination of the number of, and the appointment and discharge of court clerks, commissioners, referees, and receivers might be made the subject of centralized supervision and control by the Judicial Bureau rather than left to the determination of each district judge, subject to whatever control the Attorney General is able to exercise. Indeed, the regulation of all the affairs concerning the judicial branch of the federal government, including even the regulation of the number of judicial districts and divisions and the appointment of the places for holding court, might well be delegated to the Supreme Court or the Chief Justice, subject only to the most general regulation by Congress.

In this connection a change should be made in the manner in which the estimates of appropriations for the courts are now prepared for, and presented in the Budget. At present they are prepared by, and appear as a part of the estimates of the Department of Justice. They should be presented under a separate head entitled "The Judicial Branch." This, among other things, would make it easier to determine the cost entailed in conducting this branch of the government.

## CHAPTER XV

### THE DEPARTMENTAL ORGANIZATION

The student of the organization of the Department of Justice finds his greatest problem at the point of greatest efficiency. As has already been mentioned, no law prescribes the organization of the Department or of any division. The Attorney General has complete authority to organize or reorganize his force as best suits his view of the requirements for the efficient performance of his duties. In its minor details the departmental organization is always changing. Whole sections are created and abolished and the only notice of such changes is found, if anywhere, in the Annual Reports. The efficiency with which the Attorney General has administered his Department under these conditions raises the question whether Congress should not give similar latitude to the heads of the other departments and allow the President greater latitude in the organization of the whole executive branch.

**The Need for Uniform Designations.** The lack of legislative prescription, however, has led to one undesirable result. The absence of a uniform system of nomenclature bewilders one not well acquainted with the Department. Both the Department and the Bureau of Investigation have a "Division" of Mails and Files. The *Office* of the Solicitor General, the Anti-Trust *Division*, and the *Bureau* for the Defense of the United States in the Court of Claims and District Courts are coördinate branches of the Department. The name of the last is obviously too long.

It would be better if the major divisions of the Department were designated "bureaus," the bureaus being divided into "divisions," and the divisions into "sections." This conforms to the accepted practice in the executive departments. Applying this uniform nomenclature the organization of the Department of Justice would stand as follows:



- I. Office of the Attorney General
- II. Bureaus
  - A. Bureau of Administration
    - 1. Division of Accounts
      - a. Accounting Section
      - b. Examiners Section
    - 2. Office of Chief Clerk<sup>1</sup>
      - a. Mails and Files Section
      - b. Supply Section
      - c. Stenographic Section
      - d. Communications Section
      - e. Service Section
    - 3. Appointment Division
    - 4. Disbursing Division
    - 5. Library<sup>1</sup>
  - B. Bureau of Appeals
  - C. Bureau of Anti-Trust Litigation
  - D. Bureau of Claims Litigation
  - E. Bureau of Customs Litigation
  - F. Bureau of Prohibition and Taxation Litigation
    - 1. Division of Litigation
    - 2. Division of Prisons
  - G. Bureau of Admiralty Litigation
  - H. Bureau of Public Lands Litigation
  - I. Bureau of Criminal Litigation
  - J. Bureau for the Defense of the Orders of the Interstate Commerce Commission
  - K. Bureau of Investigation
    - 1. Division of Administration
    - 2. Division of Mails and Files
    - 3. Division of General Criminal Investigation
    - 4. Division of Theft and Frauds Investigation
    - 5. Division of Anti-Trust and Miscellaneous Investigation
    - 6. Division of Criminal Identification
  - L. Bureau of Pardons

**A Bureau of Prisons Proposed.** The position of the Superintendent of Prisons in the Department might be improved. According to no logical theory, he is a subordinate in the Division of Prohibition and Taxation. With the development of the federal prison

<sup>1</sup> Usage sanctions the departure from the uniform nomenclature in this instance.

system and the completion of the two reformatories, the work of this officer will be greatly increased. The capabilities of the man handling this work must be greater; his salary and the number of his subordinates must be increased. The Superintendent of Prisons should preside over a bureau and receive the salary of a bureau chief.

As an alternative, the combination of the Office of Superintendent of Prisons and the Pardon Division suggests itself. The duties of the Superintendent in connection with paroles are closely akin to the functions of the Pardon Attorney; and in making recommendations for pardons, the latter must necessarily constantly consult the former. A bureau in which both pardons and paroles would come under the supervision of a single person in charge of a division of that bureau would have its advantages. In connection with paroles, it might also be suggested that a report of all paroles granted, similar to that made in cases of pardons, be printed in the Annual Reports.

**Substitution of Forms for Personal Services.** The use of forms in a large law office can be pushed far with a large saving in clerk hire. This substitution of forms for clerks has not nearly reached its limit in the Department of Justice. The chief clerks complain that the small allowance made by Congress for printing gives them no margin with which to develop forms. It is suggested that Congress authorize the transfer of funds from the appropriation for salaries of clerks and stenographers to the printing fund to the extent of between 5 and 10 per cent of the salary fund.

**Customs Court Salaries.** The salaries of the Customs Court are paid by the Treasury Department. The salaries of the Court of Customs Appeals are paid by the Department of Justice. This separation is not desirable. The compensation and expenses of the Customs Court should be paid by the Department of Justice so that the expenses of the complete judicial machinery of the government may be easily apparent and controllable.

With the exceptions noted, none of them of vital importance, the machinery of the Department of Justice is well adapted to the performance of the duties allotted to it. Effective control over litigation to which the United States is a party, is a fact. Little more

could be desired in this respect. While it cannot be expected of any large organization that its head be constantly cognizant of all the details of its operation, information concerning the smallest operations of the Department may be obtained with remarkable ease. It should be said, however, that it is not the policy of the Department to seek publicity, and the ways to information desired are opened only to those with proper credentials.

## CHAPTER XVI

### THE FIELD FORCE

At the present time the field establishment of the Department of Justice consists of the district attorneys, the field agents of the Bureau of Investigation, and the United States marshals. It has been suggested that the Department of Justice be relieved of responsibility for the administration of the business affairs of the courts and that such responsibility be vested in a central agency of the judicial branch itself, operating under the general direction and control of the Supreme Court of the United States or the Chief Justice. If this is done the Department will have no responsibilities in respect to the clerks of the courts, and the anomalous situation in which these officers are subject partly to orders of the judges and partly to orders of the Attorney General will terminate. It is the purpose of this chapter to raise the question as to whether the administration of the affairs of the Department will not be facilitated if the remaining field forces—the district attorneys, the marshals, and the field agents of the Bureau of Investigation—are placed under a single direction in each judicial district.

The United States proper is divided into eighty-three districts. No district crosses state lines. Some states constitute a district; in others there are two, three, or four districts. In addition, Hawaii, Porto Rico, the Canal Zone, and Alaska each form a judicial district. Alaska, however, has four divisions which, from the point of view of the Department of Justice, are organized like districts. Most of the districts in the United States proper have two or more divisions. At the headquarters of the most important division the district attorney and marshal have their offices, usually in the post office building. At the seat of each of the other divisions, there is a deputy marshal and often an assistant district attorney.

Each judicial district forms a unit, not only in the judicial organization but also in the field force of the Department of Justice. In each district the marshal is the disbursing officer. He pays the

salaries of the officers and employees of the Department of Justice and the judges, officers, and employees of the courts and also the fees of commissioners, witnesses, and jurors.

Except for disbursements no officer of the Department of Justice is completely responsible for all the affairs of the Department in a district. Each marshal is responsible for certain functions, and he is controlled directly by the General Agent. The district attorneys are responsible directly to the Attorney General. The control of neither of these officers is very immediate. They are appointed by the President, and the nature of their functions makes it necessary to allow them wide latitude in the discharge of their duties. No "single line of command," an expression used to designate a system considered the acme of perfection in the Army, connects either the marshals or the district attorneys with the Attorney General. While they are under the constant *supervision* of the various bureaus of the Department, they are actually *controlled* in the discharge of their duties in relatively few cases.

The affairs of the Department of Justice extend into every corner of the nation. The advisability of having some one officer in each judicial district responsible for all the activities of the Department in that district might be strongly urged. The Department uses what may be conveniently called a vertical system of organization. The question suggested is whether it should adopt what may be called a horizontal system. Such an organization would make someone in each district singly responsible that the duties of the executive or administrative branch of the government in connection with the proper administration of justice be efficiently performed. The necessity of having an active public opinion to support efforts to enforce the law is apparent; especially when it is remembered that the judicial structure rests in the final analysis, in part at least, on the jury, a popular institution. A simple organization, with a single individual responsible for the efficient performance of the duties of that organization in each locality, would, it seems, lead to more active coöperation by the public in a very important governmental function.

While a horizontal organization is the one which efficiency experts seem to prefer, its use to the entire exclusion of the vertical system is found in few cases. The present organization of the Department of Justice affords a good example of the use of the ver-

tical system. The Department seems to classify its functions into three categories, namely, administration, litigation, and investigation. These it delegates to different sections of the Department and these sections have their independent field establishments. The marshals, although from a legal aspect essentially executive officers, perform primarily the administrative functions of the Department in the field. The district attorneys give their time almost exclusively to litigation, and the field offices of the Bureau of Investigation carry on the investigating activities of the Department. The marshals are controlled from the office of the General Agent, under the supervision of the Assistant Attorney General in charge of administration. The correspondence with the district attorneys goes through the departmental Division of Mails and Files to the various bureaus concerned with litigation. There is relatively close contact in the field between the district attorneys and marshals. Contact between the litigative and investigative organizations, however, is found in Washington between the headquarters of the Bureau of Investigations and the Criminal Division rather than in the field between the district attorneys and the local agents.

This vertical organization works, it appears, quite satisfactorily in the Department of Justice. A change to the horizontal system would have to meet a number of important objections. It would seem that the district attorneys are the logical officers to be placed in control if the horizontal system is adopted. To do so, however, would be to sacrifice legal skill to administrative efficiency, with the ultimate consequence of increased expense if, as is likely, the history of the Department of Justice is repeated in each district. If the district attorney like the Attorney General becomes primarily an administrative officer, then like the office of Solicitor General, a similar office would have to be created in each district to provide the requisite legal skill. To make the present local administrative officers, the marshals, the principal local representatives of the Department of Justice would require in the marshals a much higher type of ability than they now usually possess. Finally, any local control of the agents of the Bureau of Investigation would seem to interfere with the efficiency of these agents as detectives.

In connection with this topic it is well to repeat an oft-made recommendation of the Department of Justice. When the judicial

business in a district surpasses the capacity of the existing court, it is usually inadvisable for Congress to divide the district. Additional judges should be appointed in the existing courts. One-judge districts are never as satisfactory as a district with two or three judges. First, a specialization of judges is very useful. Of course, this means specialization for definite periods, not permanent specialization. When, for example, a judge confines his work to criminal cases for a period of two years, the preparation needed for each case is less and he can handle more cases. The trial of cases is a small part of a judge's activities. Not only must he investigate the law of a case before its trial, but an independent investigation must follow each trial. When a judge must try cases indiscriminately in all branches of law, either the amount of preparation that he does is inadequate or the judge is overworked. The federal judges are criticised for inattention at trials. This inattention may often be explained by the fact that the judges are forced to make use of every minute of their time to write the decisions of cases already tried. When a judge is able to specialize for a period, familiarity with the law in his speciality makes preparation much easier and the writing of decisions more expeditious and more convincing.

In the second place, each district must have its headquarters with a district attorney and marshal. This explains, even if it does not justify, the usual congressional practice. The result is that the national government has a number of low paid district attorneys, with consequent low ability, where a larger district with more judges and one district attorney would make it possible to employ an abler lawyer to administer the legal affairs of the government.

This, however, does not exhaust the evils of an additional district. Each district means a disbursing officer in the person of the marshal. This means a new set of accounts to be kept in the field and in the Department. It means, also, another set of judicial officers for the Division of Accounts to supervise, examine, and instruct.

Finally, any substantial division of the burden by the establishment of new districts is often impossible. While each district usually has a number of divisions; the great bulk of work will be found in one of the divisions, usually the largest city or the capital city of a state. The separation of the divisions in which the

work is light, even if their number is large, from the division where the great bulk of the work is found, means establishing a court which is only half worked and leaving the original court still overworked.

Before leaving the discussion of the field force, a very pertinent observation of the Assistant Attorney General in charge of administration on the interference by other departments with the marshals and district attorneys should be reproduced:<sup>1</sup>

In theory, the Attorney General is the chief law officer of the Government and directs the prosecution and defense of suits to which the United States is a party. In practice it is becoming a divided authority, due to inconsistent statutes—some passed before the Department of Justice was created, and some of recent date, clothing other departments with legal duties. This results in duplication of effort, confusion, and expense. It is reflected, also, in the offices of United States attorneys and United States marshals, through rules and requests calling for reports to departments other than the Department of Justice. The Department of Justice, in turn, receives numerous requests from the United States attorneys, marshals, and clerks of the United States courts for temporary, and sometimes permanent, clerical help in connection with preparing numerous form reports to various agencies of the Government other than the Department of Justice. Reports requested by these agencies are quite numerous, and it necessarily places an additional burden upon the clerical force, which seriously interferes with the performance of the regular duties of the clerks and officials in the various districts. It is the practice of the department to require periodical docket reports from United States attorneys, and from these and the regular reports furnished the department by the United States marshals, it is believed that all information needed by other departments of the Government could be furnished through the Department of Justice at the seat of Government, thereby relieving the field offices.

Economy and efficiency would be furthered if necessary repeal and amendment to statutes could be effected, whereby the status of the legal staffs of other departments, with respect to the Attorney General, could be clearly defined, and United States attorneys and marshals would become responsible solely to the Attorney General for their activities, including their reports.

<sup>1</sup> Attorney General, Annual Report, 1926, p. 97. See instructions to court officials, 1925, no. 203.



## CHAPTER XVII

### THE FUTURE OF THE SOLICITORS

The unusual status of the departmental Solicitors has already been described. Some departments have Solicitors who are appointed by the department heads and are not officers of the Department of Justice. Other departments have Solicitors who are appointed by the President and confirmed by the Senate as officers of the Department of Justice. To the recommendation for the transfer of all Solicitors of the Department of Justice to the department to which they are attached, there should be no opposition.<sup>1</sup> Since the recommendation was made, the office of Solicitor of Internal Revenue has been abolished and the Solicitor for the Interior Department, from a fiscal point of view, has been transferred to the Interior Department. The process should continue.

It is true that this recommendation reverses history. The office of Solicitor grew up free from the control of the Attorney General, and one of the principal reasons for the creation of the Department of Justice was to bring the Solicitors under the control of the chief law officer. The act contemplated their concentration in a single office under the Attorney General. To this office was to come the legal questions asked in the various departments. This concentration was never accomplished. The Solicitors never left their departments, and the enactment of the Revised Statutes reduced the actual connection of the most important Solicitor, the Solicitor of the Treasury, with the Department of Justice to a very unsatisfactory situation.

The Solicitors should be transferred to the departments, but all law giving them specific powers and duties should be repealed. This applies particularly to the Solicitor of the Treasury, and, in respect to compromises of suits when action in court has begun under the internal revenue laws, to the General Counsel of the

<sup>1</sup> Hearings of the Joint Committee on Reorganization of the Executive Departments, 67 Cong. 1 sess., 1924; W. F. Willoughby, pp. 88-90; H. M. Daugherty, p. 314.

Bureau of Internal Revenue, until quite recently the Solicitor of Internal Revenue.<sup>1</sup> "Confusion worse confounded" would exist again in the legal affairs of the government if the Solicitor of the Treasury were taken from under the control of the Attorney General and were not shorn of his powers and duties prescribed by law. The head of each department should be authorized to appoint a counsel, who should be recognized merely as his personal advisor and not as a law officer of the government.

<sup>1</sup> Sec. 3229, Rev. Stat.

## CHAPTER XVIII

### PENAL PROBLEMS

Until quite recently the interest of the national government in the problems presented by the incarceration of those convicted of breaking federal law has been meagre. The national penitentiary system is a twentieth century development, and the relation of reformation to penal servitude has received adequate recognition only within the last three years. There are now three national penitentiaries, two reformatories, and two reform schools. In one of the reform schools, boys from both the District of Columbia and the country generally are incarcerated. The National Training School for Girls is a District of Columbia Institution, but it has been used occasionally for federal prisoners. The incarceration of women under national auspices has only just begun. The majority of women convicted and sentenced under federal law are still sent to state institutions pending the completion of the women's reformatory. Indeed, sentences rightly deserved by women convicted under federal law have been withheld because the judges have considered that the incarceration provided by the national government for its women prisoners was too severe. Even with the federal prisons, the national government still makes use of state penitentiaries and reformatories for men prisoners, and only in rare instances does it have its own jails for temporary detention and short sentences.

It seems, however, that this condition of affairs is in a fair way to be remedied. The erection of the reformatories for men and women is progressing rapidly, and the general problem of housing and employment is receiving careful consideration from expert penologists, of whose services the national government is making constantly greater use. Several problems, however, have arisen which require immediate and serious consideration.

**Employment in the Prisons.** Each of the national penitentiaries is now supplied with reasonably adequate farm land. The prison

at McNeil Island is probably least adequately supplied. The farm at Atlanta, also, is not very satisfactory; not because of its inadequacy in acreage but as the result of its location. This farm is subject to severe droughts and is not well adapted to trucking without irrigation. A solution is being sought in the raising of cotton. Besides the farms, both Leavenworth and Atlanta now have factories producing government supplies.

*Factory Operations.* The textile factory at Atlanta has been in operation for a number of years. It supplies the Post Office Department with all its mail bags and the other departments with cotton fabrics. The Bureau of the Budget insists on the use of the factory to its full extent and is liberal in its allowance for improvements. The factory, however, can be used to much greater advantage than it now is. At almost nominal cost, it could be fitted for operation in two or three shifts and, with the proper machinery, it could go a long way toward supplying all the cotton fabrics used by the government both in piece and in finished products. If experiments now being carried on are successful, the manufacture of army khaki will be undertaken at Atlanta; and if several shifts are used the employment problem will be solved. Employment for all grades of intelligence and skill will be found in the factories and on the farm.

The shoe, broom, and brush factory at Leavenworth will soon be in operation. The two- or three-shift system could be used in this factory, too. With its three thousand inmates, there is no reason why the factory should not be efficiently utilized and all the shoes used in the penitentiaries and also in the Army, Navy, Marine Corps, and other government services in which clothing is furnished should not be supplied.

Not only would more efficient use of the prison factories serve to lessen the costs of operation but the allowance to prisoners from the enlarged profits may well be increased. This would serve in return to lighten the penalty levied on the criminal's family or to provide a fund with which he may establish himself, upon release, in a trade.

The enlargement of the list of federal crimes has increased the population of the prisons much faster than the facilities of employment have been increased. One of the greatest curses of penitentiary life is unemployment, which means wasted effort, and

results in disciplinary difficulties, mental and nervous breakdowns, and an increase in vice. Many prisoners are now substantially idle or employed only part time. Full time employment for every prisoner is a most pressing prison problem. The adoption of the three-shift system in the factories would go a long way toward solving this problem.

*Printing.* An industry that might well be added to the prison list is a printing establishment. The Government Printing Office is by no means an inexpensive place from which to order printing, and the establishment is not always able to supply the work promptly. The Printing Office might well be relieved of the printing of forms, many of them very simple, by the establishment of a printing shop at one of the penitentiaries. If the use of such a prison printing shop is not extended to the entire government, its use by the Department of Justice would serve to improve the whole administration of justice. The amount of printing required by the Department of Justice is hard to anticipate. Even the need for forms is dependent on the number and kinds of cases that arise. Toward the end of each fiscal year the progress of government litigation is slowed down by the exhaustion of the printing funds for the courts and the Department of Justice.

Even when there are funds available, the Printing Office is often too slow in delivery. The Committee on Printing has found it necessary to allow the courts to order printing from private concerns in the field because of this fact.<sup>1</sup> The delay in the Printing Office supplying printing to the Department of Justice results all too frequently in embarrassment to the legal affairs of the government. Those who have considered the matter in the Department of Justice have found the solution in the penitentiaries, each of which already has shops for prison printing.

*Housing.* The three shift system, also, might help to alleviate the overcrowded condition of the penitentiaries. A separate cell for each prisoner is desirable. At the present time, however, at both Atlanta and Leavenworth, cells designed for single occupancy house three or four inmates, hospital space is used for ordinary prison purposes, unhealthy basements are forced into use, and

<sup>1</sup> Instructions to court officials, 1923, no. 68.

even corridors are occupied. If one-third of the inmates were employed at all times, some relief would result.

This difficulty is, however, in the process of solution by other means. The men's reformatory, housing first offenders under thirty years of age, will alleviate the strain as soon as it gets into operation. With the increasing number of convictions under the narcotic and prohibition acts, however, the relief will be only temporary. Physical enlargement of the facilities is necessary.

*Drugs and Criminals.* The extent to which drugs figure in federal crimes is not generally realized. The figures (June 30, 1925) present an alarming situation:

Prison	Total inmates	Convictions under Harrison Narcotic Act	Drug addicts	Convictions under Prohibition Act
Leavenworth .....	3,294	1,254	804	203
Atlanta .....	3,258	1,107	500	304
McNeil Island .....	397	172	?	19
Totals .....	6,949	2,533	1,304	526

More than one-third of the prisoners in the federal penitentiaries were convicted under the anti-narcotic act and about one-fifth are drug addicts. There are nearly five times as many convictions for drug act violations as for serious violations of the prohibition act, and about three times as many prisoners are drug addicts as received long sentences for liquor violations. Of the 7844 persons sentenced under federal law during the fiscal year 1926, 1837 came under the prohibition act and 1991 under the anti-narcotic act.

One suggestion for the solution of the housing problem at the penitentiaries is to erect a separate institution for drug addicts, either in connection with an existing institution or at another location. Another location is probably preferable; for the expansion of the present institutions will soon reach its limit and the national government will have to look elsewhere for a location. It is to be hoped that the drug situation is a relatively temporary one. When the problem is solved, the drug institution would be available for general prison purposes.

Drug addicts, until relatively cured, are not available for any very useful employment. An institution in the country with a large farm is an ideal place for their incarceration. If such an institution is not too far distant but in a place where truck farming would be profitable, any surplus products could be sent to Atlanta.

*Women Criminals.* The drug problem appears again in connection with women prisoners. When the first superintendent of the Women's Reformatory was appointed, she circularized state institutions in which federal women prisoners were incarcerated. She received replies covering 171 cases, and of these one hundred had been convicted under the anti-narcotic act. A large number of the women convicted, in both federal and state courts, are drug addicts. The women's reformatory has been built with this fact in view; houses have been designed and a specially designated portion of the institution is set apart for the care of drug addicts.

In the case of both men and women, sentences imposed on drug addicts is often too short to allow time for a cure. The consequence is that there are many repeaters. The usual sentence is a year and a day. The consequence is that the addicts leave the penitentiaries partly cured, soon sink into worse depths than before, and return to the prison with the prospects of a real cure further off than ever. If the national government establishes a separate institution for male addicts and when the women's institution is finished, it is to be hoped that the courts will consider the question of cure when an addict appears for sentence.

**Shall the Prisons be Transferred to Another Department?** In the discussion concerning the reorganization of the national government, consideration has been given to the question of transferring the administration of the prisons to another department. There are valid arguments both for and against this proposal, and a solution of the question is hard to find.

In favor of the proposal it is alleged that the Department of Justice is a functional organization. Its duty is to supply legal skill to the affairs of the government in whatever department questions of law arise. Except for the prisons, the Department engages in no institutional activities. It is not primarily fitted for that sort of work and its officers are not usually trained in administrative affairs. Prison affairs can receive but little attention from the Attorney General, who is unlikely to be qualified to understand all the problems in the prisons. The physical operation of a prison requires much the same sort of skill as the operation of a hospital or any other service organization. The prisons might, therefore, receive more expert attention in a department

whose head is better acquainted with questions of discipline, supply, maintenance, and accounts.<sup>3</sup>

In opposition it may be stated that the question of punishment is inextricably bound up with criminal law and the courts. In the Department of Justice there is little likelihood of injudicious sentimentality entering into the treatment of prisoners. While the rehabilitation of the convict is desirable, judicious fear of punishment is a real deterrent to crime. Rehabilitation has been pushed as far as it may wisely be pushed. The transfer of prisons to a department interested in education, public health, and other humanitarian subjects unconnected with the sordid side of life may well result in the defeat of whatever progress is made by the Department of Justice in the prevention and suppression of crime.

If the administration of the prisons is transferred, the control of pardons and paroles cannot be taken from the Department of Justice. That would be unwise and undesirable from the point of view of both the convict and the proper administration of justice. The granting of paroles and the recommendation of pardons are quasi-judicial functions that can be performed efficiently only under the control of the chief law officer. The law officers are in constant contact with the courts. No other department could gauge nearly so well the temperament of the judges and the weight to be given to their recommendations for pardons and paroles. The same observation applies also to the district attorneys, who are called on to make recommendations on pardons and paroles. To the mental attitude of those recommending for or against a pardon or parole, careful consideration is given in each case presented.

In the case of pardons and paroles, considerable investigation must often be made by the Bureau of Investigation. No other department could perform the necessary detective functions nearly so well as is now done by the Bureau of Investigation. In connection with agents making these investigations, the mental attitude of the investigator must be understood, just as the mental attitude of judge and district attorney must be considered.

<sup>3</sup> See Willoughby, *Reorganization of the Administrative Branch of the National Government*, pp. 249, 253. Hearings, Joint Committee on Reorganization of Executive Departments, 1924, 68 Cong. 1 sess., pp. 92, 93.



Against the transfer might be urged, finally, the fact that the prisons are being administered satisfactorily by the Department of Justice.\*

If it is desired to relieve the Department of Justice of the institutional problems involved in the administration of the prisons, their operation and management might well be transferred to another department. To care for pardons and paroles a commissioner should be appointed in the Department of Justice whose duty it would be to go from prison to prison and hear applications for parole. This commissioner should also hear applications for pardons. Upon his recommendations after a strictly judicial hearing the Attorney General and the President could act most satisfactorily on paroles and pardons. The commissioner should receive the salary of a district judge, and to the office should be appointed the same type of lawyer as is appointed to the bench. By the use of such a commissioner and a comprehensive report to Congress, the abuse of the pardoning power need never be feared.

**Probation.** The recently established federal probation system was none too expertly provided for. As matters now stand, the probation officers seem to be members of the judicial branch. This is undesirable from many points of view. While the probation officers must necessarily work in close coöperation with the judges, their functions are administrative and executive. The average judge is much too busy to give any real attention and control to probation affairs. This supervision and control might well be supplied by the commissioner suggested above. In addition, the control of the probation officers by the Department of Justice would result in closer coöperation with the Bureau of Investigation and a better control of the accounts and fiscal affairs of those officers.

**Federal Jails.** As has been pointed out the United States owns no jails except in Alaska. Federal short-term convicts and persons awaiting trial in federal courts are incarcerated in state jails. A suggestion has been made that the national government establish at places where the number of cases justifies it a number of model jails. The recommendation is to have the national government bear the entire cost of construction, employ the entire personnel,

\*Hearing on reorganization, pp. 314-24.

and use the institutions exclusively for federal cases. One of the purposes of this innovation, according to its advocates, is to induce the states by good example to improve the conditions in state jails.

Those in charge of prison matters in the Department of Justice do not entirely approve of this recommendation. They point out that such an innovation would go contrary to the popular opposition to the further increase of federal activities in the states. With the patronage at his disposal, the Superintendent of Prisons now uses his influence in improving conditions in state institutions. Members of the Department of Justice suggest that it would be better and more economical for the United States to induce improvements in state jails by means of federal aid in the form of pay for the maintenance of federal prisoners.

## CHAPTER XIX

### CONSOLIDATION OF THE DETECTION OF CRIME

The organization and functions of the Bureau of Investigation have already been described. The proposal has been made to enlarge the Bureau and concentrate in it the entire field of criminal investigations under federal law.<sup>1</sup> The Bureau of Investigation is now charged with the general function of detecting crime, and while other agencies for detecting certain classes of crime exist, they do not have exclusive jurisdiction over these classes. The Bureau is regularly called upon to investigate breaches of all federal laws, not however, without occasional friction with the other forces.<sup>2</sup> Because their jurisdiction overlaps that of the Bureau of Investigation and because of the recommendation for the consolidation of detective work, it is desirable to notice briefly the organization of the more important investigating agencies of the national government.

Before proceeding, however, to the detailed description, attention should be directed to the fact that no statute prescribes the organization or jurisdiction of any of the detective forces. Both the Division of Post Office Inspectors and the Bureau of Investigation began as administrative examination forces. The discovery of crimes in the administrative forces led to contact with the private criminal, and in the work of each of the four major detective forces the detection of crime unconnected with the administrative work of their departments forms a principal part. The Bureau of Investigation has been relieved entirely of administrative examination.

**Division of Post Office Inspectors.** The Post Office Department is the one that comes most continually into contact with the

<sup>1</sup> Hearings, Joint Committee on Reorganization of Executive Departments, 1924, 66 Cong. 1 sess., p. 90.

<sup>2</sup> *Ibid.*, pp. 91, 233, 321 to 326; Postmaster General, Annual Report, 1921, p. 119; Attorney General, Annual Report, 1925, p. 110.

average citizen. Its post roads cover the territory of the United States more completely than any other system of communication. Its offices are found in every village and hamlet in the United States. The Postmaster General, upon whom falls the care and supervision of this great system, is kept by the rural congressman continually aware of his responsibility. It is only natural, then, that the Postmasters General should have hit upon the idea of having a mobile force of inspectors who could by continual inspection follow up or, better, prevent complaints.

The inspection service originated as a means of supervising the internal administration of the postal system. The Office of Chief Inspector first received congressional recognition in the appropriation act of 1886.<sup>3</sup> It had existed in fact for a number of years before, at least as early as 1878. The duties of the Postmaster General are no longer confined to seeing that mail is collected and delivered. They now include the administration of many criminal laws connected with the mails, such as transmission of obscene literature and fraudulent schemes, mail rifling, and post office robberies. Along with the enlargement of the duties of the Postmaster General went the enlargement of the functions of his inspection force.

*Organization.* The Chief Inspector is in immediate charge of the Division of Post Office Inspectors. His headquarters on September 1, 1926, numbered eighty-seven persons and his field force fifteen inspectors in charge and 520 inspectors. The Division has the following sections:

- |                           |                       |
|---------------------------|-----------------------|
| 1. Administrative Section | 6. Fraud Section      |
| 2. Accounting Section     | 7. Foreign Section    |
| 3. Review Section         | 8. Supply Section     |
| 4. Miscellaneous Section  | 9. Field Organization |
| 5. Depredation Section    |                       |

The Administrative Section, consisting of the Chief Inspector, the Chief Clerk, and eight other employees, has charge of the general administration of the inspection force. It supervises the activities of the inspectors and the Washington headquarters and controls the personnel of the organization.

<sup>3</sup> Act of July 31, 1886, c. 827, sec. 1, 24 Stat. L., 205. See Short, Development of National Administrative Organization, pp. 179, 352. Institute for Government Research, Studies in Administration.

The Accounting Section has charge of the appropriation records, pay accounts, and authorizations to incur expenses. It supervises investigation of claims for reward made by persons who have assisted in the apprehension of persons charged with postal crimes—technically known as “R” cases—and has custody of moneys collected and valuable articles recovered and turned in by the inspectors. It receives and audits the monthly statements of receipts and disbursements of the inspectors and keeps the accounts of the Washington headquarters. It keeps records of inspectors’ leave, domicile, and residences and maintains a correspondence index. The section is in charge of a clerk and employs seven other persons.

With the exception of the Supply Section, the other headquarters sections are employed in supervising the cases which the inspectors investigate and report on. The Review Section, consisting of eleven employees and a clerk in charge, reviews and checks all classes of cases in which collections have been made or valuable articles recovered.

The Miscellaneous Section is made up of a clerk in charge and twelve other employees, it supervises what are technically designated as “C,” “I,” “L,” and “RS” cases. The RS cases are those pertaining to the rural free delivery system, including the qualifications and salaries of postmen, and the installation or discontinuance of routes. The C cases include matters relating to city delivery, clerk hire, and other service cases. They include qualifications of and charges against postal employees and candidates, and the interception of, tampering with, and irregular handling of unregistered first class mail. The L cases have to do with leases of post office quarters and rooms for inspectors and other matters pertaining to post office buildings. The I cases are the regular inspection cases. They include the auditing of postal accounts which leads to the discovery of false return of cancellations according to which fourth-class postmasters are compensated, of inflation of stamp sales according to which other postmasters are paid,<sup>4</sup> of boycotts, of diversion of mails, of counterfeiting, reuse and improper possession of stamps, and of shortages. They also cover the condition of equipment in post offices. This section, finally, has charge of the collection of customs charges on articles sent through the

<sup>4</sup> Act of February 28, 1925, c. 368, sec. 1, 43 Stat. L., 1053.

post and of any other miscellaneous matters that may arise in the inspection force.

The Depredation Section consists of a clerk in charge and fourteen other employees. To it are assigned the "A," "B," "O," and "P" cases. The A cases are those involving the loss, rifling, or damage of registered mail, and the B cases involve similar conditions of ordinary mail. The P cases concern parcel post matters, its handling, misappropriation, damage, or rifling, and failure to remit C. O. D. collections. Burglaries, fires, wrecks, collisions, and other casualties in which mail is involved are classified as O cases.

The Fraud Section is made up of a clerk in charge and ten other employees. It has charge of the "E" cases, including the transmission through the mails of schemes to defraud, lottery matter, inflammables, intoxicants, poison, and obscene and fictitious matter.

The Foreign Section has charge of the mistreatment of and depredations upon mail matter addressed to and received from foreign countries. It has eleven employees, including a clerk in charge.

The Supply Section has charge of requisitions for supplies of the field establishment and headquarters, and of the mail of the division. It keeps the statistics of cases handled by the inspectors. The section requires the services of seven persons, including a clerk in charge.

The United States is divided into fifteen postal inspection districts, each with an inspector-in-charge and a force of postal inspectors. Postal inspectors are appointed from the Civil Service lists. Before being eligible, they must have served four years in the regular postal service. The Postmaster General nominates a group to take the examination, and from the successful candidates inspectors are appointed according to the grades obtained. The force includes a mechanic, a draftsman, and an architect. Otherwise there is no specialization among the inspectors, each being called upon to make investigations of any class of case that might arise. There is, however, a marked tendency to specialization. There are usually from one to three inspectors in each district to whom are assigned all leasing cases. Other groups tend to specialize in fraud and depredation cases; but there is no recognition of any

exclusive specialization. Except in cases of crimes, the inspectors can take no definite action as the result of their inspection. Their duty is to inform the departmental officers of the operations in the field so that the latter may take definite action. The inspectors do not consider themselves as detectives in any sense. They maintain that this designation should be reserved for the plain clothes policemen. They forewarn a post office of their visit and seek to maintain cordial and confidential relations with the regular postal force.

*Activities.* The activities of the inspectors have necessarily been enumerated in describing the headquarters organization. It is to be noted that they fall into three categories, as follows :

1. Administrative inspection of post offices and postal accounts
2. Installation and instruction in the use of machinery and technical systems
3. Detection of crime

Under the head of administrative matters may be classified the investigation of complaints regarding the handling of mails; the supervision of the organization and management of post offices, including the personnel needs, both clerical and carrier, and the investigation of charges against employees; supervision of the care of post office buildings; investigations preliminary to the selection of persons for appointment as postmasters at small offices; and the auditing of post office accounts. These activities involve all kinds of service, rural, parcel post, and ordinary. The administrative examination of parcel post affairs leads to the discovery of embezzlement from packages and although, strictly speaking, this is criminal investigation, it should be included under administrative matters, as well as the cases of theft and rifling of registered mail,

The technical experts are important members of the inspection force. The architect and draftsman are called upon to supervise the erection of buildings in all parts of the country. Careful attention must be given to the availability of a building for post office use. Much effort may be wasted through the handling of mail in a building not designated with postal needs in view. The inspectors are always on the alert for improved machines for

handling mail or more efficient distribution methods. Each detail in the handling of mail is studied, and systems of routing and handling receive special attention. The inspectors are occasionally called upon to give instructions in the use of machinery, but this is primarily the work of another division of the Department.

As has been seen in the discussion of the headquarters organization, the postoffice inspectors are called upon to make many criminal investigations. These include the larceny of mail, burglary of post offices, robbery of postmen, trains, and other conveyances, and the wilful transmission of forbidden matter in the mails. Although the inspectors express a strong opposition to being classed as detectives, more than one-third of their activity is pure criminal investigation.

In his annual report for 1921 the Postmaster General included the recommendations for the reallocation of the work of the inspectors made by a commission consisting of the Chief Inspector, the Solicitor for the Post Office Department, and a group of experts outside the service. This commission recommended, in substance, the transfer of criminal investigation work to the Bureau of Investigation of the Department of Justice. Since the report of the commission so clearly sets out the problems involved, it will be reproduced to serve both as a discussion of the specific problem and as an example of similar problems in other inspection services of the government.

WHEREAS, It is the function of the Department of Justice to investigate generally offenses against the laws of the United States for the purpose of detecting and prosecuting crime; now,

*Therefore*, It is recommended that the investigating work heretofore conducted by the Division of Post Office Inspectors of the Post Office Department be grouped and performed as follows:

Group 1, hereinafter set out, contains those activities that may be transferred to the Department of Justice.

Group 2, hereinafter set out, contains those activities that seemingly neither belong exclusively to the Post Office Department nor to the Department of Justice, but that in the interest of efficiency, economy, and the avoidance of duplication of energy, may and should be performed by both departments, each cooperating with the other in the way and manner hereinafter suggested.

Group 3, hereinafter set out, contains administrative activities of the Postal Service and should be performed as heretofore.



## GROUP 1.

Use of the mails in furtherance of schemes to defraud and in promoting lotteries.

Mailing of obscene, scurrilous, and blackmailing matter.

Mailing of explosives, intoxicants, and poisons.

Theft of mail from hall letter boxes or any receptacle designated for the receipt of the mail, as well as the mutilation, tearing down, or destroying of such receptacles.

Theft of mail from street letter boxes.

Obstruction of the mails.

Theft of Government property.

It is recommended that these activities . . . be performed hereafter by the Department of Justice, but that the Department of Justice submit promptly to the Post Office Department its report and the evidence obtained by it in the investigation of all cases of the alleged fraudulent use of the mails or of the use of the mails in the conduct of lotteries, in order that the Postmaster General may consider such evidence for the purpose of determining whether the facts warrant the taking by him of the action authorized under sections 3929 and 4041 of the Revised Statutes, as amended . . . , and also under the non-mailability lottery and fraud statutes; and also to submit to the Post Office Department the evidence in cases of the alleged violation of the so-called obscene statute, and whenever requested by the Postmaster General or whenever the Department of Justice considers it necessary, in all other cases referred to in the several groupings herein, in order to enable the Postmaster General to enforce any other provisions of the law coming under the jurisdiction of the Post Office Department.

## GROUP 2.

Embezzling, rifling, tampering with, and other mistreatment of mail matter by employees, contractors, and outsiders.

Forging, counterfeiting, unlawful issuing, or wrong payment of money orders, together with the loss, theft, forgery, and other irregularities of postal savings certificates.

Loss, theft, forgery, and other irregularities in connection with war savings certificates.

Investigations at the request of the departmental purchasing agent.

Burglaries and burnings of post offices and mail cars.

Holdup and attempted holdup of mail trains, letter carriers, rural carriers, and others having custody of the mails.

Loss, rifling, and theft of mail pouches.

Loss of mail and cashing of checks contained therein.

Assaults upon or interference with postal employees or contractors or their employees while handling the mails.

It is recommended that the Department of Justice, for the purpose of detection and prosecution of crime, cooperate with the Post Office Department in the manner to be indicated by the Post Office Department as occasion arises, in the work of investigating cases involving the foregoing activities . . . now performed by the Division of Post Office Inspectors, the object of this grouping being that the activities of the Post Office Department be devoted, exclusively, as nearly as can be, to the administrative end of affairs

postal, as separate and distinct from the work of detecting and prosecuting crime, and with the further object and end in view of avoiding duplication of activities by the Post Office Department and the Department of Justice.

### GROUP 3.

Evasion of postage (postage being the principal revenue of the service).

Private express (in contravention of the right of the Government to a monopoly in the transportation of first-class matter).

Unlawful use of penalty envelopes and franks.

Right to second-class privileges for newspapers.

Possession of unusual quantity of postage stamps.

False returns of cancellations of stamps (upon which claims of postmasters, fourth-class offices, for compensation are based).

Fraudulently obtaining mail matter, including registered, of great value.

Embezzlement of money order, postal, and other funds.

Failure of postmasters to remit custom duties.

Charges against postmasters, post office clerks, letter carriers, rural carriers, railway postal clerks, and other employees, star-route contractors.

Leasing of post office premises, equipment, and obtaining quarters not under lease.

Reorganization of post offices.

Establishment, discontinuance, change of names and sites, post offices and stations.

Selection of persons for postmaster.

Establishment and extension of City Delivery Service, Rural Delivery Service, and Star-Route Service.

Requests for additional assistance (clerks and carriers) and allowances (heat, light, and rent) of postmasters.

Inspection of post offices, obtaining delinquent accounts and deposits of official funds.

Adjustment of compensation of mail messengers and screen wagon contractors.

Inspection of the Railway Mail Service.

Investigation of complaints and interruptions of service.

Inspection of postal savings business.

Looking into and furnishing to postmasters and others, regularly and specially, instructions, whenever necessary or advisable.

Wreck of mail trains or other casualties resulting in the destruction or damage of mail.

Sinking of steamships resulting in loss or damage to mail.

Airplane accidents resulting in loss or damage to mail.

Loss or theft of pension letters or letters or other mail posted by the executive departments, congressmen, and foreign ambassadors.

Failure of postmasters to make return of charges due on C. O. D. parcel post packages.

It is believed that if the activities now performed by the Division of Post Office Inspectors be grouped and performed in the way and manner herein set out and recommended that these losses caused by depredations against the mail and for which the Post Office Department was compelled to pay during the last fiscal year approximately \$3,500,000 and for which the Congress has appropriated \$4,500,000 for the present fiscal year, will be very materially reduced.

We further believe that if these activities are grouped and performed as herein set out, the Division of Post Office Inspectors will be able to devote its entire time to things that are clearly administrative postal affairs, and thereby bring about a more effective and efficient administration of the Postal Service by giving attention to a great volume of business not now promptly performed solely because of the inadequacy of its force.<sup>6</sup>

**The Secret Service.** The Secret Service Division of the Treasury Department grew out of the activities for the suppression of counterfeiting. The first appropriation of \$10,000 for this purpose was made in 1860,<sup>7</sup> and was used to pay rewards and for services rendered by individuals without organization. When the greenbacks and war bonds were issued during the Civil War, counterfeiting increased, and Congress in 1864 appropriated \$100,000 for its suppression.<sup>8</sup> Under this appropriation the Secret Service was organized on the order of the Secretary by the Solicitor of the Treasury. The appropriations for suppressing counterfeiting continue to the present time. The Secret Service received recognition as an organization only in 1882.<sup>9</sup> For a number of years it was the only detective force in the national government and, upon occasion, was hired out to other departments, including the Department of Justice; but Congress forbade this practice in 1908.<sup>10</sup>

*Organization.* The headquarters of the Secret Service Division includes a Chief, an assistant chief, and nine other employees. The United States is divided into thirty-five secret service districts, each with an agent in charge and as many assistants as criminal activities in the district demand. The assistants are usually spread out over the entire district, with an agent in each town important enough to warrant his presence. While territorial jurisdiction is not enjoined by law, as a rule the agents are confined to their respective districts. By this means traveling and subsistence expenses while attending court are held to a minimum, the agent working on a case usually residing where it is tried. At the end of the calendar year 1925, the field force numbered 129 agents and five undercover men or informants.

<sup>6</sup> Postmaster General, Annual report, 1921, pp. 119 to 122. See also House Hearings on Post Office appropriation bill, 1925, pp. 62 to 77; 1926, pp. 165 to 180; 1927, pp. 42 to 44, 260 to 273; Hearings on Reorganization, 1924, pp. 233 to 236.

<sup>7</sup> Act of June 23, 1860, c. 205, sec. 1, 12 Stat. L., 102.

<sup>8</sup> Act of July 2, 1864, c. 210, sec. 3, 13 Stat. L., 351.

<sup>9</sup> Act of August 5, 1882, c. 389, sec. 1, 22 Stat. L., 230.

<sup>10</sup> Act of May 27, 1908, c. 200, 35 Stat. L., 328.

*Activities.* The activities of the Secret Service Division as defined in the appropriation act for 1927 are as follows:

Suppressing Counterfeiting and other crimes: For expenses incurred under the authority or with the approval of the Secretary of the Treasury in detecting, arresting, and delivering into the custody of the United States marshal having jurisdiction dealers and pretended dealers in counterfeit money and persons engaged in counterfeiting, forging, and altering United States notes, bonds, national-bank notes, Federal reserve notes, Federal reserve bank notes, and other obligations and securities of the United States and of foreign Governments, as well as the coins of the United States and of foreign Governments, and other crimes against the laws of the United States relating to the Treasury Department and the several branches of the public service under its control . . . and for no other purpose whatever except in the protection of the person of the President and the members of his immediate family and of the person chosen to be President of the United States.

It will be recalled that the duty of protecting the President is also assigned to the Bureau of Investigation.<sup>10</sup>

**The Prohibition Unit.** The Prohibition Unit comprises two district organizations. The enforcement of both the liquor prohibition act and the anti-narcotic act are within its jurisdiction. Anti-narcotic legislation began with the prohibition of the importation and use of opium for other than medical purposes in 1909.<sup>11</sup> This was followed by an act regulating the use of smoking opium<sup>12</sup> and the Harrison Anti-Narcotic Act, which provided for the registration and taxation of the users and dispensers of narcotics, authorized the employment by the Commissioner of Internal Revenue of chemists and agents, and appropriated \$150,000 for enforcement.<sup>13</sup> The administration of the wartime prohibition act devolved

<sup>10</sup> House Hearings on Treasury Department appropriation bill, 1925, pp. 329 to 336; 1926, pp. 205 to 209; 1927, pp. 555 to 560; House Hearings on Department of Justice appropriation bill, 1925, p. 90; 1926, p. 62. See also, Secretary of the Treasury, Annual Report.

<sup>11</sup> Act of February 9, 1909, c. 100, 35 Stat. L., 614, amended by acts: January 17, 1914, c. 9, 38 Stat. L., 275; May 26, 1922, c. 202, 42 Stat. L., 596.

<sup>12</sup> Act of January 17, 1914, c. 10, 38 Stat. L., 277.

<sup>13</sup> Act of December 17, 1914, c. 1, 38 Stat. L., 785; amended by act of February 24, 1919, c. 18, sec. 1006, 40 Stat. L., 1130.

upon the Bureau of Internal Revenue.<sup>14</sup> In 1919 the prohibition amendment was adopted, and the Volstead Act<sup>15</sup> carrying an appropriation for its enforcement went into effect on January 16, 1920. In the appropriation act for 1921 the enforcement of the prohibition act was joined with that of the anti-narcotic acts.<sup>16</sup>

Before organizing his force, the Commissioner of Internal Revenue appointed a committee to make recommendations, which were submitted on November 8, 1919. The recommendations provided for a prohibition commissioner and a new unit to enforce the two acts and supervise the legitimate use of both drugs and intoxicating liquors.<sup>17</sup> Recommendations were soon made for the transfer of prohibition enforcement to the Department of Justice, but the Attorney General, while recognizing the theoretical desirability of the change, expressed strongly his lack of desire to undertake the activity.<sup>18</sup> A bill to create a separate Prohibition Bureau in the Treasury Department was introduced in the second session of the Sixty-eighth Congress and extensive hearings were held, but the bill was not passed.<sup>19</sup> A similar bill has been reintroduced in each Congress since that time. The Budget for 1926<sup>20</sup> included a proviso permitting the Secretary of the Treasury to transfer part of the prohibition enforcement funds to the fund for the "Detection and prosecution of crimes" under the Department of Justice, but this was not enacted by Congress. On April 1, 1925, Brigadier General Andrews was appointed Assistant Secretary of the Treasury and placed in charge of prohibition enforcement. He completely reorganized the Prohibition Force. While the Commissioner of Internal Revenue is still legally in control of prohibition enforcement, he has deputized the prohibition administrators so that they, under the supervision of the Assistant Secretary, are now charged with enforcement.

<sup>14</sup> Act of November 21, 1918, c. 212, 40 Stat. L., 1046.

<sup>15</sup> Act of October 27, 1919, c. 85, 41 Stat. L., 305.

<sup>16</sup> Act of May 29, 1920, c. 214, 41 Stat. L., 654.

<sup>17</sup> Schmeckebier and Eble, *Bureau of Internal Revenue*, pp. 61, 62 (1923).  
Institute for Government Research, *Service Monograph No. 25*.

<sup>18</sup> Hearings on Reorganization, 1924, pp. 318 to 326.

<sup>19</sup> S. Committee on the Judiciary, *Hearings on H. R. 6645 (Crampton Bill)* 68 Cong., 2 sess.

<sup>20</sup> P. 763.

*Organization.* The Prohibition Unit has the following divisions:

1. Office of Director of Prohibition
2. Office of Chief Counsel
3. Narcotic Division
  1. Headquarters
  2. Field establishment
4. Industrial Alcohol and Chemical Division
5. Audit Division
6. Office of Chief Prohibition Investigator
7. Office of Supervisor of Alcohol Control
8. Office of Supervisor of Brewery Control
9. Prohibition Field Establishment

The Assistant Secretary who supervises prohibition enforcement is also in charge of the Customs Service and the Coast Guard. Since the reorganization, however, his attention has been taken almost exclusively by prohibition enforcement. The office of Commissioner of Prohibition has not been abolished. Its second incumbent still holds office as a subordinate to, and adviser of, the Assistant Secretary. His main duty is to direct the efforts of private organizations interested in the suppression of the liquor traffic and otherwise assist in arousing popular support for "law enforcement."

The immediate control of the prohibition organization is lodged in a Director. He directs the carrying out of the policies prescribed; renders decisions in complicated cases; and supervises the organization and administration of the offices of the prohibition administrators throughout the United States. He has charge of matters pertaining to estimates of appropriations, allotments of funds to the several districts, personnel, space, equipment, and general administrative work. The total force of the prohibition-narcotic organization numbers 4600 persons, of whom 323 are stationed in Washington.

The Chief Counsel is the legal advisor in prohibition matters. He and his force of four attorneys prepare opinions and holdings on prohibition law and regulations. The Chief Counsel conducts correspondence involving questions of law with other departments, prohibition administrators, and other prohibition officers. He prepares opinions for the Bureau of Internal Revenue in prohibition

cases and makes recommendations for compromises in prohibition cases and on applications for pardons and paroles.<sup>21</sup>

All work incident to the administration of the Harrison Narcotic Act and the permissive features of the narcotic drugs import and export act, including the supervision of the work of the narcotic field force, is performed by the Narcotic Division. The headquarters of this division has three sections: (1) Returns and Auditing, (2) Legal, and (3) Administrative. The Administrative Section, under the Chief of the Division, supervises the activities of the narcotic field force, the enforcement of the regulations for the use of narcotics, and personnel matters. This section includes thirteen employees. The Legal Section, consisting of attorneys and clerks to the number of thirty-four, advises the Chief on narcotic legal matters and makes recommendations on offers of compromise. The employees of this section are not called upon to assist the district attorneys in the trial of cases. The Returns and Auditing Section supervises and checks the returns, made by the collectors of internal revenue, of permits to use opium, and audits the vouchers of dispensers of narcotics and the returns of importers, manufacturers, and wholesale dealers.

The field force of the Narcotic Division includes (September 1926) fifteen agents in charge, 273 agents, and thirty-nine clerks. All members of the narcotic field force are chosen from the classified civil service. The United States and its territories are divided into fifteen narcotic divisions, in each of which is located a field office under an agent-in-charge with a small force of agents and clerks. Each field office supervises the legal use of opium in its district and seeks to prevent the illegal use of it. The large number of federal prisoners convicted under the Harrison Act attests the efficiency of this force.<sup>22</sup>

The industrial Alcohol and Chemical Division of the Prohibition Unit conducts the chemical experiment work for the entire Bu-

<sup>21</sup> Commissioner of Internal Revenue, Annual Report, 1925, pp. 27-29; House Hearings on Department of Justice appropriation bill, 1927, pp. 344, 345.

<sup>22</sup> House Hearings on Treasury Department appropriation bill, 1927, pp. 431 to 440, Commissioner of Internal Revenue, Annual Report, 1925, pp. 30 to 32.

reau of Internal Revenue. It operates laboratories at Washington, Buffalo, Chicago, Columbus, Little Rock, Minneapolis, New York, Philadelphia, Providence, and San Francisco. The laboratories analyze samples of butter, oleomargarine, fats, oils, distilled spirits, fermented beverages, whiskey, narcotic drugs, non-beverage medicinal preparations, and denatured alcohol. During 1926 they analyzed 105,101 samples. The Washington laboratory analyzes and passes upon the fitness of preparations to be manufactured with distilled spirits, including specially denatured alcohol. Samples taken as evidence in enforcement work under the national prohibition act are submitted to the various laboratories either in Washington or in the field. The laboratories supply expert witnesses for cases involving questions arising out of their analyses. This Division has supervision of work growing out of the provisions of Title III of the prohibition act relating to the production and use of industrial alcohol, consisting more particularly of the establishment of industrial alcohol plants, alcohol bonded warehouses, and denaturing plants; of the tax-free withdrawal of pure alcohol from the use of the government of the United States, the states, territories, municipalities, hospitals, colleges, etc.; and conducts the correspondence relating to such matters and to the sale and use of denatured alcohol. It also conducts work relating to the permissive use of intoxicating liquors under Title II of the act and administers certain features of the general internal revenue laws relating to bonded warehouses and to those distilleries still operating under the law; makes the assignment of storekeeper gaugers and gaugers; and keeps a registry of stills. The Division is also charged with the work now being carried on by the Bureau of Internal Revenue in connection with the concentration of distilled spirits.

The Audit Division assesses taxes and penalties in all cases involving liquors and narcotics where assessable liabilities have been incurred, and keeps accounts of the assessments. It acts on claims for the abatement, refund, or remission of taxes or penalties levied on distilled spirits and wines. It makes recommendations on offers in compromise of liabilities incurred under bonds of hospitals or scientific institutions for the use of tax-free alcohol. It examines and audits returns and accounts relating to:



1. Alcohol upon which taxes have not been paid and other spirits in government bonded warehouses, or removed therefrom tax-free or upon payment of tax
2. Alcohol removed for the purpose of being denatured and denatured alcohol shipped to or in possession of manufacturers, dealers, and users
3. Wines in wineries and bonded storerooms, grape brandy used in the fortification of sweet wines, and cereal beverages in breweries and dealcoholizing plants
4. Liquors dispensed on physicians' prescriptions; wines for sacramental purposes; liquors used in manufacturing and compounding; and liquors received by physicians, hospitals, etc.

The Chief Prohibition Agent has a headquarters force of seventeen and a mobile organization of seventy agents. He is charged with the border control of the movement of intoxicating liquors and is expected to prevent smuggling both by land and water. He works on land in close coöperation with the Coast Guard. His force is distributed along the Atlantic and Pacific Coast and along the borders of Canada and Mexico. His agents report through him direct to the Assistant Secretary. The Director of Prohibition has charge only of the fiscal affairs relating to the office of Chief Prohibition Agent.

Similarly, both the Supervisor of Alcohol Control and the Supervisor of Brewery Control report directly to the Assistant Secretary. Each has a small headquarters force and a mobile field force of about seventy-five agents. The alcohol agents are specially trained to detect the leak of alcohol from legitimate channels and the brewery or beer agents are trained to discover the sources of illicit brewing. Groups of these agents forming flying squadrons are loaned as needed to the prohibition administrators to overcome particularly bad situations in their districts.

The United States and its territories are divided into twenty-four prohibition districts. Each district includes one or more judicial districts. In charge of each prohibition district is an administrator. Deputy administrators are provided to care for enforcement in each judicial district. Each administrator has two assistant administrators and an attorney. One assistant administrator has charge of enforcement matters and general supervision of the prohibition agents in the district. The other assistant,

usually a chemist or pharmacist, has charge of the issuing of permits and the supervision of the legitimate use of alcohol in his district. The permissive assistant, as he is called, has under him a group of inspectors who supervise denaturing and distilling plants. The attorney has charge of the revocation of permits and supervises the work of the agents with a view to the presentation of cases to the courts. Before submission to the district attorneys, the prohibition attorneys digest and arrange the evidence, thus eliminating poorly prepared prosecutions as far as possible. The attorneys maintain close coöperation with the district attorneys and are regularly called upon to try the cases. In addition to the prohibition attorneys, each deputy administrator, whenever the volume of work justifies it, is provided with an assistant attorney, who supervises the presentation of cases and assists the district attorneys. Deputy administrators are specially charged with maintaining contact with the judicial machinery for the purpose of obtaining speedy judgments and efficient enforcement. Besides agents and inspectors, each administrator is provided with clerks, messengers, and other necessary employees. The field force includes (September 1926), besides the administrators, thirty-eight assistant administrators, fifty-five deputy administrators, twenty-four pharmacists, thirty-seven chemists, sixty-seven attorneys, 1671 agents, 190 inspectors, 114 warehouse agents, and 977 clerks, messengers, and other minor employees. They are appointed by the administrators and are not under the classified Civil Service. Control of the actions of the prohibition administrators is accomplished by means of monthly reports covering the entire field of activity of each field office.<sup>28</sup>

*Activities.* The activities of the Prohibition Unit have necessarily been enumerated in connection with the description of its organization. Attention, however, might well be directed to the essential duality of its functions. On the one hand, a permit system for the legal use of both narcotics and intoxicants must be administered. This requires the services of a large number of

<sup>28</sup> House Hearings on the Treasury Department appropriation bill, 1925, pp. 455 to 529; 1926, pp. 469 to 594; 1927, pp. 303 to 440; Commissioner of Internal Revenue, Annual Report, 1924, pp. 29 to 39; 1925, pp. 25 to 37; Secretary of the Treasury, Annual Report, 1925, pp. 84, 376, 382, 500.

scientists and experts and makes the officers charged with the issuance of permits in many respects quasi-judicial. The breaches of law and the violations of the terms of the permits are necessary considerations in connection with renewals. The necessity for this information is the justification given for lodging the detective functions in connection with the laws under which permits are issued in an organization under the control of the officer who issues the permits. Detective work is the second category of the activities of the Prohibition Unit. It should be noted that the actual organization has clearly recognized the distinction between the two functions.

The current appropriation act providing funds for the Prohibition Unit reads :

. . . For the purpose of concentration, upon the initiation of the Commissioner of Internal Revenue and under regulations prescribed by him, distilled spirits may be removed from any internal revenue bonded warehouse to any other warehouse, and may be bottled in bond in any such warehouse before or after payment of the tax, and the Commissioner shall prescribe the form and penal sums of bonds covering distilled spirits in internal revenue bonded warehouses, or in transit between such warehouses. . . .

For the expenses to enforce the provisions of the National Prohibition Act and the Act entitled "An Act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon, all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium, or cocoa leaves, their salts, derivatives, or preparations, . . ." and the Act . . . known as "The Narcotic Drugs Import and Export Act," including the employment of executive officers, agents, inspectors, chemists, assistant chemists, supervisors, clerks, and messengers in the field and in . . . the District of Columbia, . . . for the collection and dissemination of information on law enforcement, including the necessary printing in connection therewith; [and] the securing of evidence of violations of the Acts; . . .

**Other Detective Agencies.** The three organizations described in this chapter and the Bureau of Investigation are the most important detective forces; but they do not exhaust the detecting energies of the national government. There are a number of organizations engaged principally in administrative supervision and examination which expend part of their energy in the detection of

crime. This detective work is usually closely connected with their other duties. Otherwise the Bureau of Investigation is called upon for assistance. The other investigating agencies are:

1. Shipping Board, Investigation Division
2. State Department, Special Agents
3. Treasury Department, Customs Agents
4. Treasury Department, Internal Revenue Agents
5. Veterans' Bureau, Field Examiners
6. War Department, Military Intelligence Division
7. Navy Department, Naval Intelligence Division <sup>24</sup>

**Conclusions.** Although the Bureau of Investigation is charged with investigation of the entire field of federal crime, the special fields intrusted to the other investigating agencies are in practice excepted from the work of that Bureau. Between some of the organizations, there is considerable rivalry and occasionally some recriminations. The lack of coöperation between the various units sometimes results in the escape of criminals and unnecessary expense. That the work of investigation by the national government should be concentrated more than it is, should be evident from the foregoing discussion.

In considering this problem the three functions that the agencies perform should be always in mind. A distinction should be made between administrative examination and control, criminal investigation, and administration of laws. The Post Office inspectors perform mainly the first function, but also engage in the second. The Prohibition Unit performs the last two about equally. The Bureau of Investigation is confined exclusively to the second, and the Department of Justice examiners, to the first. In considering the matter of concentration it must be borne in mind that there is a limit to the size of any organization beyond which further concentration means decrease instead of increase in efficiency.

The first undesirable feature of the present arrangement is the large number of field offices. In New York City five field offices of the various investigating units have been set up, in some cases in adjoining rooms. These are the Bureau of Investigation, the

<sup>24</sup> House Hearings on the Department of Justice appropriation bill, 1925, p. 110.

Secret Service, the Narcotic Division, the Postal Inspectors, and the Prohibition Enforcement Unit. A concentration of all these forces would eliminate most of these offices. One administrator could perform the necessary supervision and give his time exclusively to that work. The force under him would justify his relinquishment of the investigating work to which he must now give part of his time. Combination of the clerical forces would result in the elimination of a number of positions. Of course, such work of the various organizations as is not investigation would have to be continued and offices would have to be maintained, but there would be some elimination. In New York, for instance, the office of the Secret Service could be entirely eliminated. The permit activities of the Narcotic and Prohibition Units could be combined, and the office of the Postal Inspectors could be curtailed. The result would be at most three instead of five field offices. The result in the entire United States would be even more imposing than in New York.

The usual objection to the concentration of the investigating services is that the Secret Service, for instance, requires persons of peculiar skill not possessed by the ordinary agent. The unification of forces would not require the discharge of such skilled persons. It should be recalled that several specialties are already represented in the Bureau of Investigation. To add to this list counterfeiting, postal fraud, and narcotic experts would present no difficulty.

A large force under one head, again, would justify the government in establishing a detective school for the recruitment of the service. The agents of the Bureau of Investigation are now required to attend private institutions. A school under the head of the unified national detective force would allow the development of the student in that specialty in which he is found by experience to be best able to serve the government. In addition, careful instruction could be given in the preparation of cases for trial in the federal courts. The poor preparation of a case often results in the escape of a criminal. Only a school given exclusively to the service of the national government could afford to concentrate sufficiently on federal requirements.

It should be remarked however, that the organization provided for the enforcement of the Prohibition Act is large. To combine

it with the other organizations would make a very large institution. Better results would possibly be obtained by concentrating the work of all investigating units including the Narcotic Unit but excepting the Prohibition Unit. The latter is charged with the enforcement of an act that is constantly before the public. The solutions of the numerous problems involved are far away. It is probably desirable, therefore, not to involve the other non-controversial affairs of the government in the popular discussion of this one highly controversial organization.<sup>28</sup>

<sup>28</sup> During the closing days of the last Congress, a bill was passed providing for a Bureau of Customs and a Bureau of Prohibition in the Treasury Department and that the prohibition agents are to be appointed under the civil service regulations. This will not, however, cause a material change in the organization of the Prohibition Unit described in this chapter.



APPENDIX 1  
 OUTLINE OF ORGANIZATION  
 DEPARTMENT OF JUSTICE  
 AUGUST 5, 1926

<i>Organisation Units; Classes of Employees</i>	<i>Number</i>	<i>Annual Salary Rate</i>
1. General Administration		
1. Office Proper of the Attorney General		
Attorney General	1	\$15,000
Attorney	1	7,500
Investigator	1	5,200
Secretary	1	3,500
Assistant Secretary	1	2,900
Stenographer	1	2,040
	1	1,860
Chauffeur	1	2,040
2. Administrative Division		
1. Executive Office		
Assistant Attorney General	1	7,500
Attorney	1	5,200
	1	2,500
	1	2,100
Senior Administrative Assistant	1	5,600
Secretary	1	2,900
Stenographer	1	2,100
	1	1,860
Clerk	1	1,680
2. Division of Accounts		
General Agent	1	5,600
Assistant General Agent	1	3,600
Attorney	1	2,400
Administrative Accountant	1	3,400
Examiner in Charge	1	3,400
Supervising Examiner	1	2,500
	2	2,200
	3	2,000
	5	1,920
	2	1,740
Examiner (Field service)	7	3,100 to 4,000
	6	2,600 to 3,000
	8	2,400 to 2,500



## THE DEPARTMENT OF JUSTICE

	Stenographer	7	1,500 to 1,920
	Statistical Clerk	3	1,620 to 2,600
	Clerk	25	1,500 to 2,600
3.	Office of Chief Clerk		
1.	Executive Office		
	Chief Clerk	1	5,000
	Assistant Chief Clerk	1	3,000
	Stenographer	1	2,000
		1	1,500
	Nurse	1	2,300
2.	Division of Mails and Files		
	Chief	1	3,000
	Assistant Chief	1	2,100
	Typist	12	1,320 to 1,680
	Clerk	25	1,140 to 2,000
3.	Supply Division		
	Chief	1	2,400
	Stenographer	1	1,320
	Typist	2	1,380
		1	1,320
	Clerk	7	1,500 to 1,860
	Storekeeper	1	1,500
	Packer	3	1,200
		1	1,140
4.	Stenographic Bureau		
	Chief	1	2,400
	Stenographer	13	1,320 to 1,920
	Typist	6	1,320 to 1,680
	Clerk	4	1,200 to 1,440
5.	Communication Section		
	Clerk	1	2,100
	Telephone Operator	4	1,200 to 1,380
6.	Subclerical Services		
	Mechanic	1	1,260
		1	1,200
	Guard	1	1,200
		1	1,140
	Laborer, Foreman	1	1,440
	Laborer	1	1,140
	Messenger	34	1,020 to 1,260
4.	Office of Disbursing Clerk		
	Disbursing Clerk	1	3,900
	Deputy Disbursing Clerk	1	2,500
	Bookkeeper	1	2,100
	Stenographer	1	2,000
	Clerk	1	1,740
		1	1,320

# OUTLINE OF ORGANIZATION

223

5. Office of Appointment Clerk		
Appointment Clerk	1	2,900
Clerk	5	1,440 to 1,860
6. Library		
Librarian	1	3,100
Assistant Librarian	1	2,500
	1	1,680
	1	1,260
2. Technical Branches		
1. Office of the Solicitor General		
1. Supreme Court Section		
Solicitor General	1	10,000
Attorney	1	7,500
	2	6,000
	1	5,200
	1	3,100
	1	3,000
	1	2,900
Secretary	1	2,600
Stenographer	4	1,500 to 2,100
Clerk	1	1,320
2. Commerce Section		
Assistant to the Solicitor General	1	7,500
Clerk	1	2,040
2. Anti-Trust Division		
Assistant to the Attorney General	1	9,000
Attorney	1	7,500
	1	6,500
	1	5,200
	1	4,000
	1	3,100
	1	1,860
Secretary	1	2,600
Stenographer	7	1,560 to 1,920
Clerk (Docket)	1	2,700
3. Claims Division		
Assistant Attorney General	1	7,500
Attorney	1	8,500
	1	7,000
	1	6,500
	6	6,000
	1	5,400
	14	5,200
	2	4,800
	6	4,600
	1	4,400
	3	4,000

## THE DEPARTMENT OF JUSTICE

	9	3,800
	1	3,600
	1	3,400
	1	3,000
	1	2,800
	1	2,400
	1	1,860
Secretary	1	2,600
Economist Analyst	2	4,800
Accountant	2	2,400
Stenographer	2	2,040
	2	1,860
	6	1,740
	1	1,560
	9	1,500
Typist	1	1,320
Clerk	1	2,300
	1	2,200
	1	1,320
Messenger	1	1,260
4. Customs Division		
Assistant Attorney General	1	8,000
Attorney	1	6,000
	1	5,800
	2	5,400
	3	4,600
	1	4,200
	1	4,000
	1	3,500
	1	3,000
Stenographer	4	1,500 to 2,200
Clerk	1	2,800
	1	2,600
Telephone Operator	1	1,800
Messenger	1	1,200
	1	1,020
	1	900
5. Division of Prohibition and Taxation		
1. Legal Section		
Assistant Attorney General	1	7,500
	3	5,400
Attorney	2	5,200
	1	4,800
	1	4,000
	3	3,000
	1	2,400
	1	1,920
	1	1,860

# OUTLINE OF ORGANIZATION

225

Secretary	I	2,900
Assistant Secretary	I	1,920
Stenographer	7	1,500 to 1,980
2. Office of Superintendent of Prisons		
1. Office proper of Superintendent of Prisons		
Superintendent of Prisons	I	6,000
Assistant Superintendent of Prisons	I	5,200
Personnel Officer	I	3,500
Stenographer	4	1,380 to 2,100
Typist	I	1,320
Clerk	I	1,860
2. Field Service		
Inspector of Prisons	I	3,800
	I	3,300
	I	3,100
6. Admiralty Division		
Assistant Attorney General	I	7,500
Attorney	I	7,000
	2	5,200
	I	2,400
Secretary	I	2,600
Stenographer	5	1,500 to 1,920
7. Public Lands Division		
Assistant Attorney General	I	7,500
Attorney	2	6,000
	3	5,200
	2	3,800
	I	3,000
Secretary	I	2,900
Stenographer	6	1,320 to 1,920
Clerk	I	2,040
	I	1,740
8. Criminal Division		
Assistant Attorney General	I	7,500
Attorney	I	7,500
	I	4,600
	I	4,000
	2	3,800
	I	1,860
Secretary	I	2,400
Stenographer	7	1,560 to 2,400
9. Bureau of Investigation		
1. Office of Director (Division 1)		
Director	I	7,500
Assistant to Director	I	3,300

## THE DEPARTMENT OF JUSTICE

Secretary	I	2,300
Stenographer	I	2,100
	I	1,740
	I	1,560
Clerk	I	1,500
Chauffeur	I	2,040
Messenger	I	1,020
2. Administrative Division (Division 5)		
Chief Clerk	I	3,000
Typist	I	1,680
	I	1,320
Clerk	7	1,380 to 1,920
3. Division of Mails and Files (Division 7)		
Chief	I	2,100
Typist	11	1,140 to 1,680
Clerk	16	1,140 to 1,860
Messenger	2	1,020
4. General Intelligence Division (Division 2)		
Assistant Director (Supervisor)	I	5,600
Assistant Supervisor	I	3,800
Stenographer	I	1,680
	I	1,320
5. Theft and Fraud Division (Division 3)		
Supervisor	I	3,800
Assistant Supervisor	I	3,300
Accountant	I	1,740
Stenographer	2	1,500
	I	1,320
Typist	I	1,440
Clerk	I	1,740
	I	1,440
6. Anti-Trust Division (Division 4)		
Supervisor	I	4,400
Assistant Supervisor	I	3,300
Stenographer	I	1,920
	I	1,680
	I	1,560
Typist	I	1,680
7. Identification Division (Division 6)		
Chief	I	3,300
Fingerprint Expert	2	3,000

# OUTLINE OF ORGANIZATION

227

Fingerprint Classifier	2	1,740
	2	1,680
	5	1,560
	12	1,500
Stenographer	1	1,500
Typist	8	1,140 to 1,560
Clerk	10	1,140 to 1,500
Messenger	1	1,020
8. Field Force		
Special Agent	1	5,800
	1	5,200
	1	4,800
	1	4,600
	5	4,200
	25	3,600 to 4,000
	93	3,100 to 3,500
	173	2,600 to 3,000
	7	1,680 to 2,500
Accountant	2	5,000
	2	4,800
	1	4,600
	3	4,400
	1	4,200
	21	3,600 to 4,000
	22	3,100 to 3,500
	14	3,000
	13	1,860 to 2,400
Translator	1	2,100
Stenographer	77	1,320 to 2,200
Clerk	9	1,320 to 1,740
Telephone Operator	1	1,600
	1	1,440
10. Pardon Division		
Attorney in Charge of Pardons	1	4,200
Attorney	1	3,300
Stenographer	1	1,800
	1	1,680
	1	1,320
Clerk	1	2,200
	1	2,040
	1	1,560
11. Solicitor of the Treasury		
Solicitor	1	6,000
Attorney	2	5,200
	1	3,100
	2	2,500
	1	2,400

## THE DEPARTMENT OF JUSTICE

	2	2,300
	1	1,860
Stenographer	1	1,920
	2	1,860
Typist	1	1,320
Clerk	1	1,680
Messenger	1	1,080
12. Solicitor for Department of Commerce		
Solicitor	1	6,000
Attorney	1	5,200
	1	3,000
	2	2,500
Stenographer	1	1,920
	1	1,860
	1	1,740
Messenger	1	1,020
13. Solicitor for Department of Labor		
Solicitor	1	6,000
Attorney	1	5,200
	1	3,100
	1	2,500
Stenographer	1	1,740
	1	1,560
Messenger	1	1,080
14. Solicitor for Department of State <sup>1</sup>		
Solicitor	1	6,000
15. Solicitor for Department of Interior <sup>2</sup>		
3. Field Service		
1. Prisons		
1. Leavenworth		
Warden	1	5,942
Deputy Warden	1	4,200
Assistant Deputy Warden	1	2,075
Physician	1	3,230
Chief Clerk	1	2,193
Assistant Chief Clerk	1	1,596
Clerk	5	1,232 to 2,222
Captain of Watch	3	1,860
Chaplain	2	1,878
Storekeeper	1	1,860
Superintendent of Farms	1	1,997
Pharmacist	1	1,860

<sup>1</sup> Subordinates are assigned from the employees of the Department of State.

<sup>2</sup> The salaries of the employees of this office including that of the Solicitor at \$6500 is provided for in the Interior Appropriation Act.

# OUTLINE OF ORGANIZATION

229

Parole Officer	1	1,941
Foreman	1	1,680
Head Cook	1	1,680
Record Clerk	1	1,843
Engineer	1	1,860
Assistant Engineer and Electrician	2	1,500
Oculist	1	1,500
Guards	120	1,500
Stenographer	1	1,320
Dentist	1	1,200
Teamster	2	1,020
2. Atlanta		
Warden	1	5,900
Deputy Warden	1	4,592
Assistant Deputy Warden	1	2,400
Physician	1	3,025
	1	1,860
Chief Clerk	1	2,400
Clerk	2	1,320
	2	1,200
General Foreman	1	2,400
Chaplain	2	1,860
Storekeeper	1	1,860
Captain of the Watch	3	1,860
Parole Officer	1	1,860
Record Clerk	1	1,680
Clerk	2	1,775
Foreman	2	1,860
	4	1,680
Engineer and Electrician	1	1,860
Assistant Engineer	2	1,500
Head Cook	1	1,676
Guards	122	1,500
Pharmacist	1	1,500
Oculist	1	1,200
Dentist	1	1,200
Musical Director	1	1,140
Stenographer	1	1,270
3. McNeil Island		
Warden	1	4,900
Deputy Warden	1	3,000
Chief Clerk	1	2,400
Assistant Chief Clerk	1	1,620
Chaplain and Teacher	1	2,400
Physician	1	2,200
Parole Officer	1	2,197
Captain of the Watch	1	2,197



## THE DEPARTMENT OF JUSTICE

Engineer and Electrician	1	1,980
Foreman	3	1,980
Steward and Cook	1	1,980
Guards	32	1,800
Stenographer	1	1,460
4. Women's Reformatory *		
5. Industrial Reformatory		
Superintendent	1	4,725
Salvage Foreman	1	1,680
Guard	2	1,612
Superintendent of Warehouse	1	1,500
Warehouseman	1	1,000
Clerk	1	1,500
Typist	1	1,440
Stenographer	1	1,440
Packer	1	1,320
Checker	1	1,155
Fire Patrolman	1	1,200
	1	912
Laborer	1	912
	1	900
6. National Training School for Boys		
Superintendent	1	3,397
Assistant Superintendent	1	2,497
Chief Clerk, Secretary and		
Treasurer	1	2,600
Teacher	1	1,860
	12	1,380
	5	1,277
Parole Officer	1	1,680
Plumber	1	1,680
Nurse	1	1,680
	1	1,260
Engineer	1	1,320
	1	1,200
Carpenter	1	1,500
Clerk	1	1,500
	1	1,200
Blacksmith	1	1,500
Farmer	1	1,500
	1	1,140
Baker	1	1,380
Helper	1	1,286
	4	970
Shoemaker	1	1,380

\* In process of construction, no personnel.

# OUTLINE OF ORGANIZATION

231

Physical Director	1	1,380
Tailor	1	1,340
Storekeeper and Steward	1	1,380
Cook	1	1,260
	1	960
Laundress and Organist	1	1,320
Dairyman	1	1,200
Watchman	8	1,155
Attendant, dining room	2	960
Seamstress	1	840
Matron	6	840
Housemaid	1	840
2. Offices of United States Attorneys		
District Attorney *	85	3,000 to 10,000
(Alaska) *	4	5,000
(Canal Zone) *	1	5,000
Regular Assistant District Attorney	368	1,860 to 7,500
Clerks *	430	720 to 3,300
3. Offices of United States Marshals		
Marshal *	85	3,000 to 6,500
(Alaska) *	4	4,000
(Canal Zone) *	1	5,000
Salaried Deputy Marshal	885	60 to 3,100
Fee Deputy Marshal	17	(Fees to 1,500)
4. Special Service		
Special Assistant to District Attorney †	33	
Special Assistant to Attorney General †	56	

\* Salaries fixed by Attorney General within range.

† Salaries fixed by law.

‡ Including stenographers, messengers, laborers, and telephone operators.

§ These officers are each paid by special contract made by the Attorney General and do not receive salaries.

## APPENDIX 2

### SPECIMEN JUDICIAL DISTRICT ORGANIZATIONS

<i>Territorial Division; Classes of Employees</i>	<i>Number</i>	<i>Annual Salary Rate</i>
Maryland		
1. Baltimore		
District Attorney	1	\$6,000
Assistant District Attorney	1	2,800
	1	2,600
	2	2,200
Clerk	1	2,100
	1	1,800
	1	1,620
	1	1,560
	1	1,380
Marshal	1	4,000
Deputy Marshal	1	2,400
	6	1,440
	1	1,320
2. Cumberland		
Deputy Marshal	1	1,320
3. Frederick		
Deputy Marshal	1	Fees
4. Annapolis		
Deputy Marshal	1	Fees
5. Marion Station		
Deputy Marshal	1	Fees
Texas		
1. Northern District		
1. Dallas Division		
District Attorney	1	6,000
Assistant District Attorney	1	3,000
Clerk to District Attorney	1	2,500
	1	1,500
Marshal	1	5,000
Deputy Marshal	1	2,600
	1	1,860
	2	1,560
	2	1,500
	1	1,320

2. Fort Worth Division		
Assistant District Attorney	I	4,000
	I	3,000
	I	2,800
	I	2,300
Clerk to District Attorney	I	1,860
	I	1,500
Deputy Marshal	I	2,040
	I	1,560
3. Abilene Division		
Deputy Marshal	I	1,680
4. Amarillo Division		
Deputy Marshal	I	1,440
5. San Angelo Division		
6. Wichita Falls Division		
Deputy Marshal	I	1,680
2. Southern District		
1. Houston Division		
District Attorney	I	5,500
Assistant District Attorney	I	4,600
	3	2,700
Clerk to District Attorney	I	2,040
	I	1,680
	2	1,560
Marshal	I	4,000
Deputy Marshal	I	2,500
	I	1,800
	I	1,620
	I	1,560
	I	1,500
2. Galveston Division		
Deputy Marshal	I	1,320
3. Laredo Division		
Deputy Marshal	I	1,320
4. Brownsville Division		
Deputy Marshal	I	1,440
5. Victoria Division		
Deputy Marshal (Official Residence:		
Mission)	I	1,320
6. Corpus Christi Division		
Deputy Marshal	I	1,320
3. Eastern District		
1. Paris Division		
Marshal	I	4,250
Deputy Marshal	I	2,300
	I	1,800
	I	1,500

2.	Tyler Division		
	Deputy Marshal	I	1,320
3.	Jefferson Division		
4.	Beaumont Division		
	Assistant District Attorney	I	3,300
	Clerk to District Attorney	I	1,440
		I	1,020
		I	1,680
5.	Sherman Division		
	District Attorney	I	5,500
	Clerk to District Attorney	I	2,040
		I	1,500
	Deputy Marshal	I	1,140
6.	Texarkana Division		
	Deputy Marshal	I	1,320
4.	Western District		
1.	San Antonio Division		
	District Attorney	I	6,500
	Assistant District Attorney	I	2,800
		I	2,400
	Clerk to District Attorney	I	2,040
		I	1,860
		I	1,620
		I	1,500
	Marshal	I	6,000
	Deputy Marshal	I	2,400
		I	1,860
		I	1,800
		I	1,560
		I	1,500
		I	1,320
2.	Austin Division		
	Deputy Marshal	I	1,320
3.	Waco Division		
	Deputy Marshal	I	1,500
4.	El Paso Division		
	Assistant District Attorney	I	3,500
		I	3,000
	Clerk to District Attorney	I	1,440
	Deputy Marshal	I	1,920
		I	1,860
5.	Del Rio Division		
	Deputy Marshal	I	1,320
6.	Pecos Division		
	Deputy Marshal	I	Fees

APPENDIX 3

THE JUDICIAL DIVISIONS OF THE UNITED STATES  
TERRITORIAL ORGANIZATIONS; PLACES OF HOLDING COURT

ALABAMA

Northern District

Northeastern Division

Counties: Culman, Jackson, Lawrence, Limestone, Madison, and Morgan  
Huntsville

Northwestern Division

Counties: Colbert, Franklin, and Lauderdale  
Florence

Southern Division

Counties: Blount, Jefferson, and Shelby  
Birmingham

Eastern Division

Counties: Calhoun, Clay, Cleburne, and Talladega  
Anniston

Western Division

Counties: Bibb, Greene, Pickens, Sumter, and Tuscaloosa  
Tuscaloosa

Middle Division

Counties: Cherokee, Dekalh, Etowah, Marshall, and St. Clair  
Gadsden

Jasper Division

Counties: Fayette, Lamar, Marion, Walker, and Winston  
Jasper

Middle District

Northern Division

Counties: Aulauga, Barbour, Bullock, Butler, Chilton, Coosa, Covington, Crenshaw, Elmore, Lowndes, Montgomery, and Pike  
Montgomery

Southern Division

Counties: Coffee, Dale, Geneva, Henry, and Houston  
Dothan

Eastern Division

Counties: Chambers, Lee, Macon, Randolph, Russell, and Tallapoosa  
Opelika

Southern District

Northern Division

Counties: Dallas, Hale, Marengo, Perry, and Wilcox  
Selma

Southern Division

Counties: Baldwin, Choctaw, Clarke, Conecuh, Escambia, Mobile, Monroe, and Washington  
Mobile

## ALASKA

## District: Entire Territory

## Division No. 1

All of Alaska lying east of 141° west longitude

Juneau

As directed by Attorney General

As the court considers necessary

## Division No. 2

All that territory lying west of a line commencing on the Arctic coast at the 148th meridian; thence extending south along the easterly watershed of the Colville River to a point on the Rocky Mountain divide between the headwaters of Colville River on the north and west and the waters of the Chandlar River on the south; thence southwesterly along the divide between the waters of the Colville River, the Kotzebue Sound, and Norton Sound on the north and west and the waters of the Yukon on the south to the 161st meridian of west longitude; thence along said meridian to a point midway between the Yukon River and the Kuskokwim River; thence southwesterly along to the point of intersection of the 61st parallel of north latitude with the shore of Bering Sea; the said division to include all the islands lying north of the 58th parallel of north latitude and west of the 148th meridian of west longitude, excepting Nelson Island, all islands in Kuskokwim Bay, all islands in Bristol Bay, and all islands in the Gulf of Alaska, north of the 58th parallel of north latitude

Nome

As directed by Attorney General

As the court considers necessary

## Division No. 3

All that territory lying south and west of the line starting on the coast of the Gulf of Alaska at the 141st meridian of west longitude; thence northerly along said meridian to a point due east from Mount Kimball; thence west to the summit of Mount Kimball; thence southwesterly along the southerly watershed of the headwaters of Tanana River; thence westerly along the divide between the waters of the Gulf of Alaska on the south and the waters of the Yukon on the north to the summit of Mount McKinley; thence continuing southwesterly along the divide between the waters of the Gulf of Alaska and Bristol Bay on the south and the waters of the Yukon and Kuskokwim River and Bay on the north and west, and the Gulf of Alaska and Bristol Bay on the south to the westerly point of Cape Newenham; said division to include the Alaska Peninsula, the Aleutian and Pribilof Islands, and all islands along and off the coast of this division, between Cape Newenham and the point where the 141st meridian, west longitude, intersects the northern line of the territory

Valdez

As directed by Attorney General

As the court considers necessary

## Division No. 4

All that part of the district of Alaska lying east of the second division and north of the third division, and all islands along the north coast

of said division, east of the 148th meridian of west longitude, also Nelson Island and all islands in Kuskokwim Bay.

Fairbanks

As directed by Attorney General

As the court considers necessary

#### ARIZONA

District: Entire State

Tucson

Phoenix

Prescott

Globe

#### ARKANSAS

Eastern District

Eastern Division

Counties: Cross, Desha, Lee, Monroe, Phillips, St. Francis, and Woodruff

Helena

Western Division

Counties: Arkansas, Chicot, Clark, Cleveland, Conway, Dallas, Drew, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lincoln, Lonoke, Montgomery, Perry, Pope, Prairie, Pulaski, Saline, Van Buren, White, and Yell

Little Rock

Northern Division

Counties: Cleburne, Izard, Jackson, Sharp, Stone, and Independence

Batesville

Jonesboro Division

Counties: Clay, Craighead, Crittenden, Fulton, Greene, Lawrence, Mississippi, Poinsett, and Randolph

Jonesboro

Western District

Texarkana Division

Counties: Sevier, Howard, Little River, Pike, Hempstead, Miller, Lafayette, and Nevada

Texarkana

Eldorado Division

Counties: Ashley, Bradley, Columbia, Ouachita, Union and Calhoun

Eldorado

Fort Smith Division

Counties: Polk, Scott, Logan, Sebastian, Franklin, Crawford, Washington, Benton, and Johnson

Fort Smith

Harrison Division

Counties: Baxter, Boone, Carroll, Madison, Marion, Newton, and Searcy

Harrison

#### CALIFORNIA

Northern District

Northern Division

Counties: Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Plumas, Mendocino, Lake, Colusa, Glenn, Butte,



Sierra, Sutter, Yuba, Nevada, Sonoma, Napa, Yolo, Placer, Solano,  
Sacramento, Eldorado, San Joaquin, Amador, Calaveras, Stanislaus,  
Tuolumne, Alpine, and Mono

Eureka

Sacramento

Southern Division

Counties: San Francisco, Marin, Contra Costa, Alameda, San Mateo,  
Santa Clara, Santa Cruz, Monterey, and San Benito

San Francisco

Southern District

Northern Division

Counties: Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, and  
Tulare

Fresno

Southern Division

Counties: Imperial, Los Angeles, Orange, Riverside, San Bernardino,  
San Diego, San Luis Obispo, Santa Barbara, and Ventura

Los Angeles

San Diego

#### CANAL ZONE

District: Entire Territory

Division at

Balboa

As designated by Judge

Division at

Cristobal

As designated by Judge

#### COLORADO

District: Entire State

Denver

Pueblo

Grand Junction

Montrose

Durango

#### CONNECTICUT

District: Entire State

New Haven

Hartford

Norwalk

#### DELAWARE

District: Entire State

Wilmington

#### DISTRICT OF COLUMBIA

District: Entire Territory

Washington

## FLORIDA

## Northern District

Counties: Alachua, Bay, Calhoun, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Santa Rosa, Taylor, Wakulla, Walton, and Washington  
 Tallahassee  
 Pensacola  
 Marianna  
 Gainesville

## Southern District

Counties: Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Columbia, Dade, De Soto, Dixie, Duval, Flagler, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsboro, Indian River, Lake, Lee, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. John, St. Lucie, Sumter, Suwanee, Union, and Volusia  
 Tampa  
 Key West  
 Jacksonville  
 Ocala  
 Miami  
 Fernandina

## GEORGIA

## Northern District

## Gainesville Division

Counties: Banks, Barrow, Dawson, Forsyth, Habersham, Hall, Jackson, Lumpkin, Rabun, Stephens, Towns, Union, and White  
 Gainesville

## Atlanta Division

Counties: Campbell, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fannin, Fayette, Fulton, Gilmer, Gwinnett, Heard, Henry, Milton, Newton, Pickens, Rockdale, Spalding, and Troup  
 Atlanta

## Rome Division

Counties: Bartow, Catoosa, Chattooga, Dade, Floyd, Gordon, Haralson, Murray, Paulding, Polk, Walker, and Whitfield  
 Rome

## Middle District

## Athens Division

Counties: Clarke, Elbert, Franklin, Greene, Hart, Madison, Morgan, Oconee, Oglethorpe, and Walton  
 Athens

## Macon Division

Counties: Baldwin, Bibb, Bleckley, Butts, Crawford, Hancock, Houston, Jasper, Jones, Lamar, Monroe, Peach, Pulaski, Pike, Putman, Twiggs, Upson, Washington, and Wilkinson  
 Macon

## Columbus Division

Counties: Chattahoochee, Clay, Harris, Marion, Meriwether, Muscogee, Quitman, Randolph, Stewart, Talbot, and Taylor  
 Columbus

**Americus Division**

Counties: Crisp, Dooly, Lee, Macon, Schley, Sumter, Terrell, Webster, and Wilcox

**Americus****Albany Division**

Counties: Baker, Calhoun, Decatur, Dougherty, Early, Grady, Miller, Mitchell, Seminole, Turner, and Worth

**Albany****Valdosta Division**

Counties: Berrien, Brooks, Colquitt, Cook, Echols, Irwin, Lanier, Lowndes, Thomas, and Tift

**Valdosta****Southern District****Augusta Division**

Counties: Burke, Columbia, Glascock, Jefferson, Lincoln, McDuffie, Richmond, Taliaferro, Warren, and Wilkes

**Augusta****Dublin Division**

Counties: Dodge, Emanuel, Jeff Davis, Johnson, Laurens, Montgomery, Telfair, Toombs, Treutlen, and Wheeler

**Dublin****Savannah Division**

Counties: Bryan, Bulloch, Candler, Chatham, Effingham, Evans, Jenkins, Liberty, Long, McIntosh, Screven, and Tattnall

**Savannah****Waycross Division**

Counties: Appling, Atkinson, Bacon, Ben Hill, Brantley, Camden, Charlton, Clinch, Coffee, Glynn, Pierce, Ware, and Wayne

**Waycross****HAWAII****District: Entire Territory**

Islands: Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, Oahu, and a number of uninhabited islands

**Honolulu**

As judges deem expedient

**IDAHO****District: Entire State****Northern Division**

Counties: Boundary, Benewah, Bonner, Kootenai, and Shoshone  
Cœur d'Alene City

**Central Division**

Counties: Idaho, Latah, Nez Perce, Clearwater, Lewis, and that portion of Valley County lying east of the Sawtooth Mountain Range

**Moscow****Southern Division**

Counties: Ada, Blaine, Boise, Canyon, Cassia, Elmore, Lincoln, Owyhee, Twin Falls, Washington, Adams, Gem, portion of Valley County lying west of the Sawtooth Mountain Range, Camas, Gooding, Payette, Minidoka, and Jerome

**Boise City**

## Eastern Division

Counties: Bannock, Bear Lake, Bingham, Caribou, Bonneville, Butte, Clark, Custer, Fremont, Franklin, Jefferson, Lemhi, Madison, Oneida, Power, and Teton  
Pocatello

## ILLINOIS

## Northern District

## Eastern Division

Counties: Cook, De Kalb, Du Page, Grundy, Kane, Kendall, Lake, La Salle, McHenry, and Will  
Chicago

## Western Division

Counties: Boone, Carroll, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, and Winnebago  
Freeport

## Southern District

## Southern Division

Counties: Adams, Bond, Brown, Calhoun, Cass, Christian, De Witt, Greene, Hancock, Jersey, Logan, Macon, Macoupin, Madison, Mason, McLean, Menard, Montgomery, Morgan, Pike, Sangamon, Schuyler, and Scott  
Springfield  
Quincy

## Northern Division

Counties: Bureau, Fulton, Henderson, Henry, Knox, Livingston, Marshall, McDonough, Mercer, Peoria, Putnam, Rock Island, Stark, Tazewell, Warren, and Woodford  
Peoria

## Eastern District

Counties: Alexander, Champaign, Clarke, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Gallatin, Hamilton, Hardin, Iriquois, Jackson, Jasper, Jefferson, Johnson, Kankakee, Lawrence, Marion, Massac, Monroe, Moultrie, Perry, Piatt, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Shelby, Union, Vermillion, Wabash, Washington, Wayne, White, and Williamson  
Danville  
Cairo  
East St. Louis

## INDIANA

## District: Entire State

## Indianapolis Division

Counties: Bartholomew, Boone, Brown, Clinton, Decatur, Delaware, Fayette, Fountain, Franklin, Hamilton, Hancock, Hendricks, Henry, Howard, Johnson, Madison, Marion, Monroe, Montgomery, Morgan, Randolph, Rush, Shelby, Tipton, Union, and Wayne  
Indianapolis

## Fort Wayne Division

Counties: Adams, Allen, Blackford, DeKalb, Grant, Huntington, Jay, Lagrange, Noble, Steuben, Wells, and Whitley  
Fort Wayne

## South Bend Division

Counties: Cass, Elkhart, Fulton, Kosciusko, La Porte, Marshall, Miami, Pulaski, Saint Joseph, Starke, and Wabash

South Bend

## Hammond Division

Counties: Benton, Carroll, Jasper, Lake, Newton, Porter, Tippecanoe, Warren, and White

Hammond

## Terre Haute Division

Counties: Clay, Greene, Knox, Owen, Parke, Putnam, Sullivan, Vermillion, and Vigo

Terre Haute

## Evansville Division

Counties: Daviess, Dubois, Gibson, Martin, Perry, Pike, Posey, Spencer, Vanderburg, and Warrick

Evansville

## New Albany Division

Counties: Clark, Crawford, Dearborn, Floyd, Harrison, Jackson, Jefferson, Jennings, Lawrence, Ohio, Orange, Ripley, Scott, Switzerland, and Washington

New Albany

## IOWA

## Northern District

## Eastern Division

Counties: Allamakee, Blackhawk, Bremer, Buchanan, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Floyd, Howard, Jackson, Mitchell, and Winneshiek

Dubuque

Waterloo

## Cedar Rapids Division

Counties: Benton, Cedar, Grundy, Hardin, Iowa, Jones, Linn, and Tama

Cedar Rapids

## Central Division

Counties: Butler, Calhoun, Carroll, Cerro Gordo, Emmet, Franklin, Hamilton, Hancock, Humboldt, Kossuth, Palo Alto, Pocahontas, Webster, Winnebago, Worth, and Wright

Fort Dodge

Mason City

## Western Division

Counties: Buena Vista, Cherokee, Clay, Dickinson, Ida, Lyon, Monona, O'Brien, Osceola, Plymouth, Sac, Sioux, and Woodbury

Sioux City

## Southern District

## Central Division

Counties: Boone, Dallas, Greene, Guthrie, Jasper, Madison, Marion, Marshall, Polk, Poweshiek, Story, and Warren

Des Moines

## Eastern Division

Counties: Des Moines, Henry, Lee, Louisa, and Van Buren

Keokuk

## Western Division

Counties: Audubon, Cass, Crawford, Harrison, Mills, Montgomery,  
Pottawattamie, Shelby  
Council Bluffs

## Southern Division

Counties: Adair, Adams, Clarke, Decatur, Fremont, Lucas, Page, Ring-  
gold, Taylor, Union, and Wayne  
Creston

## Davenport Division

Counties: Clinton, Muscatine, Scott, Washington, and Johnson  
Davenport

## Ottumwa Division

Counties: Appanoose, Davis, Jefferson, Keokuk, Mahaska, Monroe, and  
Wapello  
Ottumwa

## KANSAS

## District: Entire State

## First Division

Counties: Atchison, Brown, Chase, Cheyenne, Clay, Cloud, Decatur,  
Dickinson, Doniphan, Douglas, Ellis, Franklin, Geary, Gove, Graham,  
Jackson, Jefferson, Jewell, Johnson, Leavenworth, Lincoln, Logan,  
Lyon, Marion, Marshall, Mitchell, Morris, Nemaha, Norton, Osage,  
Osborne, Ottawa, Phillips, Pottawatomie, Rawlins, Republic, Riley,  
Rooks, Russell, Saline, Shawnee, Sheridan, Sherman, Smith, Thomas,  
Trego, Wabaunsee, Wallace, Washington, and Wyandotte  
Leavenworth  
Topeka  
Kansas City  
Salina

## Second Division

Counties: Barber, Barton, Butler, Clark, Comanche, Cowley, Edwards,  
Ellsworth, Finney, Ford, Grant, Gray, Greeley, Hamilton, Harper,  
Harvey, Haskell, Hodgeman, Kearney, Kingman, Kiowa, Lane,  
McPherson, Meade, Morton, Ness, Pawnee, Pratt, Reno, Rice, Rush,  
Scott, Sedgwick, Seward, Stafford, Stanton, Stevens, Sumner, and  
Wichita  
Wichita

## Third Division

Counties: Allen, Anderson, Bourbon, Chautauqua, Cherokee, Coffey,  
Crawford, Elk, Greenwood, Labette, Linn, Miami, Montgomery, Neo-  
sho, Wilson, and Woodson  
Fort Scott

## KENTUCKY

## Eastern District

Counties: Anderson, Bath, Bell, Boone, Bourbon, Boyd, Boyle, Bracken,  
Breathitt, Campbell, Carroll, Carter, Clark, Clay, Elliott, Estill, Fay-  
ette, Fleming, Floyd, Franklin, Gallatin, Garrard, Grant, Greenup,  
Harlan, Harrison, Henry, Jackson, Jessamine, Johnson, Kenton,  
Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln,  
McCreary, Madison, Magoffin, Martin, Mason, Menifee, Mercer,

Montgomery, Morgan, Nicholas, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Scott, Shelby, Trimble, Wayne, Whitley, Wolfe, and Woodford

Jackson  
Frankford  
Covington  
Richmond  
London  
Catlettsburg  
Lexington

#### Western District

Counties: Adair, Allen, Ballard, Bairen, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Casey, Christian, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Fulton, Graves, Grayson, Green, Hancock, Hardin, Hart, Henderson, Hickman, Hopkins, Jefferson, Larue, Livingston, Logan, Lyon, McCracken, McLean, Marion, Marshall, Meade, Metcalfe, Monroe, Muhlenberg, Nelson, Ohio, Oldham, Russell, Simpson, Spencer, Taylor, Todd, Trigg, Union, Warren, Washington, and Webster

Louisville  
Paducah  
Owensboro  
Bowling Green

### LOUISIANA

#### Eastern District

##### New Orleans Division

Parishes: Assumption, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary, St. Tammany, Tangipahoa, Terrebonne, and Washington

##### New Orleans

##### Baton Rouge Division

Parishes: Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, and West Feliciana

##### Baton Rouge

#### Western District

##### Alexandria Division

Parishes: Avoyelles, Catahoula, Grant, LaSalle, Rapides, and Winn

##### Alexandria

##### Monroe Division

Parishes: Caldwell, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, and West Carroll

##### Monroe

##### Opelousas Division

Parishes: Evangeline, Lafayette, St. Landry, St. Martin, and Vermilion  
Opelousas

##### Shreveport Division

Parishes: Bossier, Beenville, Caddo, Claiborne, De Soto, Natchitoches, Red River, Sabine, and Webster

##### Shreveport

## Lake Charles Division

Parishes: Acadia, Calcasieu, Cameron, Vernon, Beauregard, Jeff Davis,  
and Allen  
Lake Charles

## MAINE

## District: Entire State

## Northern Division

Counties: Aroostook, Penobscot, Piscataquis, Washington, Hancock,  
Waldo, and Somerset  
Bangor

## Southern Division

Counties: Remaining counties  
Portland

## MARYLAND

## District: Entire State

Baltimore  
Cumberland  
Denton

## MASSACHUSETTS

## District: Entire State

Boston  
Springfield  
New Bedford  
Worcester

## MICHIGAN

## Eastern District

## Northern Division

Counties: Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford,  
Genesee, Gladwin, Gratiot, Huron, Iosco, Isabella, Midland, Mont-  
morency, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Sagi-  
naw, Shiawassee, and Tuscola  
Bay City  
Port Huron

## Southern Division

Counties: Branch, Calhoun, Clinton, Hillsdale, Ingham, Jackson, Lapeer,  
Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Sanilac,  
Washtenaw, and Wayne  
Detroit

## Western District

## Northern Division

Counties: Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Hough-  
ton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, On-  
tonagon, and Schoolcraft  
Marquette  
Sault Ste. Marie

## Southern Division

Counties: Allegan, Antrim, Barry, Benzie, Berrien, Cass, Charlevoix,  
Eaton, Emmet, Grand Traverse, Ionia, Kalamazoo, Kalkaska, Kent,



Lake, Leclanau, Manistee, Mason, Mecosta, Missaukee, Montcalm,  
Muskegon, Newaygo, Oceana, Osceola, Ottawa, St. Joseph, Van  
Buren, and Wexford  
Grand Rapids

## MINNESOTA

## District: Entire State

## First Division

Counties: Dodge, Fillmore, Houston, Mower, Olmsted, Steele, Wa-  
basha, and Winona  
Winona

## Second Division

Counties: Blue Earth, Brown, Cottonwood, Fairbault, Freeborn, Jack-  
son, Lacquie Parle, Le Sueur, Lincoln, Lyon, Martin, Murray, Nicol-  
let, Nobles, Pipestone, Redwood, Rock, Sibley, Waseca, Watonwan,  
and Yellow Medicine  
Mankato

## Third Division

Counties: Chisago, Dakota, Goodhue, Ramsey, Rice, Scott, and  
Washington  
St. Paul

## Fourth Division

Counties: Anoka, Carver, Chippewa, Hennepin, Isanti, Kandiyohi,  
McLeod, Meeker, Renville, Sherburne, Swift, and Wright  
Minneapolis

## Fifth Division

Counties: Aitkin, Benton, Carlton, Cass, Cook, Crow Wing, Itasca,  
Kanabec, Koochiching, Lake, Mille Lacs, Morrison, Pine, and  
St. Louis  
Duluth

## Sixth Division

Counties: Becker, Beltrami, Big Stone, Clay, Clearwater, Douglas,  
Grant, Hubbard, Kittson, Lake of the Woods, Mahnomen, Marshall,  
Norman, Otter Tail, Pennington, Polk, Pope, Roseau, Red Lake,  
Stearns, Stevens, Todd, Traverse, Wadena, and Wilkin  
Fergus Falls

## MISSISSIPPI

## Northern District

## Eastern Division

Counties: Alcorn, Attala, Chickasaw, Choctaw, Clay, Itawamba, Lee,  
Lowndes, Monroe, Oktibbeha, Pontotoc, Prentiss, Tishomingo, and  
Winston  
Aberdeen

## Western Division

Counties: Benton, Calhoun, Carroll, De Soto, Grenada, Lafayette,  
Marshall, Montgomery, Panola, Tate, Tippah, Union, Webster, and  
Yalobusha  
Oxford

## Delta Division

Counties: Bolivar, Coahoma, Leflore, Quitman, Sunflower, Tallahatchie,  
and Tunica  
Clarksdale

## Southern District

## Jackson Division

Counties: Amite, Copiah, Covington, Franklin, Hinds, Holmes, Jefferson Davis, Lawrence, Leake, Lincoln, Madison, Pike, Rankin, Simpson, Smith, Scott, Wilkinson, and Yazoo

## Jackson

## Eastern Division

Counties: Clarke, Jones, Jasper, Kemper, Lauderdale, Neshoba, Newton, Noxubee, and Wayne

## Meridian

## Western Division

Counties: Adams, Claiborne, Humphreys, Issaquena, Jefferson, Sharkey, Warren, and Washington

## Vicksburg

## Southern Division

Counties: Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Perry, Pearl River, Stone, and Walthall

## Biloxi

## MISSOURI

## Eastern District

## Eastern Division

Counties: Audrain, Crawford, Dent, Franklin, Gasconade, Iron, Jefferson, Lincoln, Maries, Montgomery, Phelps, St. Charles, St. Francois, Ste. Genevieve, St. Louis, Warren, Washington, and city of St. Louis

## St. Louis

## Rolla

## Southeastern Division

Counties: Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, Shannon, Stoddard, and Wayne

## Cape Girardeau

## Northern Division

Counties: Adair, Charleton, Clark, Knox, Lewis, Linn, Maton, Marion, Monroe, Pike, Ralls, Randolph, Schryler, Scotland, and Shelby

## Hannibal

## Western District

## Western Division

Counties: Bates, Caldwell, Carroll, Cass, Clay, Grundy, Henry, Jackson, Johnson, Lafayette, Livingston, Mercer, Putnam, Ray, St. Clair, Saline, and Sullivan

## Kansas City

## Chillicothe

## St. Joseph Division

Counties: Andrew, Atchison, Buchanan, Clinton, Daviess, Dekalb, Gentry, Harrison, Holt, Nodaway, Platte, and Worth

## St. Joseph

## Central Division

Counties: Benton, Boone, Callaway, Camden, Cole, Cooper, Hickory, Howard, Miller, Moniteau, Morgan, Osage, and Pettis

## Jefferson City

## Southern Division

Counties: Cedar, Christian, Dade, Dallas, Douglas, Greene, Howell, Laclede, Oregon, Ozark, Polk, Pulaski, Taney, Texas, Webster, and Wright

## Springfield

## Southwestern Division

Counties: Barry, Barton, Jasper, Lawrence, McDonald, Newton, Stone, and Vernon  
Joplin

## MONTANA

## District: Entire State

Helena

Butte

Great Falls

Missoula

Billings

## NEBRASKA

## District: Entire State

## Chadron Division

Counties: Boxbutte, Cherry, Dawes, Sheridan, and Sioux

## Chadron

## Grand Island Division

Counties: Blaine, Buffalo, Custer, Garfield, Grant, Greeley, Hall, Hooker, Howard, Loup, Merrick, Sherman, Thomas, and Valley

## Grand Island

## Hastings Division

Counties: Adams, Clay, Franklin, Harlan, Kearney, Nuckolls, Phelps, and Webster

## Hastings

## Lincoln Division

Counties: Butler, Cass, Fillmore, Gage, Hamilton, Jefferson, Johnson, Lancaster, Nemaha, Otoe, Pawnee, Polk, Richardson, Saline, Saunders, Seward, Thayer, York

## Lincoln

## McCook Division

Counties: Chase, Dundy, Frontier, Furnas, Gosper, Hayes, Hitchcock, Perkins, and Redwillow

## McCook

## Norfolk Division

Counties: Antelope, Boyd, Brown, Holt, Keyapaha, Knox, Madison, Pierce, Rock, Stanton, and Wayne

## Norfolk

## North Platte Division

Counties: Arthur, Banner, Cheyenne, Dawson, Deuel, Garden, Keith, Kimball, Lincoln, Logan, McPherson, Morrill, and Scotts Bluff

## North Platte

## Omaha Division

Counties: Boone, Burt, Cedar, Colfax, Cuming, Dakota, Dixon, Dodge, Douglas, Nance, Platte, Sarpy, Thurston, Washington, and Wheeler  
Omaha

## JUDICIAL DIVISIONS

249

### NEVADA

District: Entire State  
Carson City

### NEW HAMPSHIRE

District: Entire State  
Concord  
Littleton

### NEW JERSEY

District: Entire States  
Newark  
Trenton  
Camden

### NEW MEXICO

District: Entire State  
Santa Fe

### NEW YORK

#### Northern District

Counties: Albany, Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Warren, and Washington, with the waters thereof.

Albany  
Utica  
Binghamton  
Auburn  
Syracuse

#### Southern District

Counties: Bronx, Columbia, Dutchess, Greene, New York, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester, with the waters thereof.

New York City

#### Eastern District

Counties: Kings, Nassau, Queens, Richmond, and Suffolk, with the waters thereof.

Brooklyn

#### Western District

Counties: Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates, with the waters thereof.

Elmira  
Buffalo  
Rochester  
Jamestown  
Lockport  
Canandaigua

## NORTH CAROLINA

## Eastern District

Counties: Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Scotland, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson

Laurinburg

Wilson

Elizabeth City

Washington

New Bern

Wilmington

Raleigh

## Middle District

Counties: Alamance, Alleghany, Ashe, Cabarrus, Caswell, Chatham, Davidson, Davie, Forsyth, Guilford, Lee, Hoke, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Stanly, Stokes, Surry, Watauga, Wilkes, and Yadkin

Greensboro

Salisbury

Wilkesboro

Winston-Salem

## Western District

Counties: Alexander, Anson, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Iredell, Jackson, Lincoln, Macon, Madison, McDowell, Mecklenburg, Mitchell, Polk, Rutherford, Swain, Transylvania, Union, and Yancey

Asheville

Charlotte

Statesville

Shelby

## NORTH DAKOTA

## District: Entire State

## Southeastern Division

Counties: Barnes, Cass, Ransom, Richland, Sargent, and Steele.

Fargo

## Southwestern Division

Counties: Adams, Bowman, Burleigh, Dunn, Emmons, Grant, Hettinger, Kidder, Logan, McIntosh, McLean, Morton, Stark, Golden Valley, Slope, Sioux, Oliver, Mercer, and Billings.

Bismarck

## Northeastern Division

Counties: Cavalier, Grand Forks, Nelson, Pembina, Traill, and Walsh  
Grand Forks

## Northwestern Division

Counties: Benson, Bottineau, McHenry, Pierce, Ramsey, Rolette, and  
Towner  
Devils Lake

## Western Division

Counties: Burke, Divide, Mountrail, Renville, Ward, Williams, and McKenzie

Minot

## Central Division

Counties: Griggs, Foster, Eddy, Wells, Sheridan, Stutsman, La Moure, and Dickey

Jamestown

## OHIO

## Northern District

## Eastern Division

Counties: Ashland, Ashtabula, Carroll, Columbiana, Crawford, Cuyahoga, Geauga, Holmes, Lake, Lorain, Mahoning, Medina, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, and Wayne

Cleveland

Youngstown

## Western Division

Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca, Van Wert, Williams, Wood, and Wyandot

Toledo

Lima

## Southern District

## Western Division

Counties: Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Lawrence, Miami, Montgomery, Preble, Scioto, Shelby, and Warren

Cincinnati

Dayton

## Eastern Division

Counties: Athens, Belmont, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Knox, Licking, Logan, Madison, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Union, Vinton, and Washington

Columbus

Steubenville

Dayton

## OKLAHOMA

## Eastern District

Counties: Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Carter, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, Le Flore, Love, McClain, Muskogee, McIntosh, McCurtain, Murray, Marshall, Okmulgee, Pittsburg, Pushmataha, Pontotoc, Seminole, Stephens, Sequoyah, and Wagoner

Muskogee

Ada

Okmulgee

Hugo

South McAlester

Ardmore

Chickasha

Poteau

Pauls Valley

#### Northern District

Counties: Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Osage, Ottawa, Pawnee, Rogers, Tulsa, and Washington

Tulsa

Vinita

Pawkuska

Miami

Bartlesville

#### Western District

Counties: Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, Woodward.

Guthrie

Oklahoma City

Enid

Lawton

Woodward

Mangum

### OREGON

#### District: Entire State

Portland

Pendleton

Medford

### PENNSYLVANIA

#### Eastern District

Counties: Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, Philadelphia, and Schuylkill

Philadelphia

#### Middle District

Counties: Adams, Bradford, Cameron, Carbon, Center, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York

Scranton

Harrisburg

Lewisburg

Williamsport

#### Western District

Counties: Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland

Pittsburgh

Erie

## PORTO RICO

District: entire territory  
San Juan  
Ponce  
Mayaguez  
As judge deems expedient

## RHODE ISLAND

District: entire state  
Providence

## SOUTH CAROLINA

Eastern District  
Charleston Division  
Counties: Beaufont, Berkeley, Charleston, Carlendon, Colleton, Dorchester, and Jasper  
Charleston  
Columbia Division  
Counties: Calhoun, Kershaw, Lee, Lexington, Orangeburg, Richland, and Sumter  
Columbia  
Florence Division  
Counties: Chesterfield, Darlington, Dillon, Florence, Georgetown, Horry, Marion, Marlboro, and Williamsburg  
Florence  
Aiken Division  
Counties: Aiken, Allendale, Bamberg, Barnwell, and Hampton  
Aiken  
Western District  
Greenville Division  
Counties: Greenville and Laurens  
Greenville  
Rock Hill Division  
Counties: Chester, Lancaster, and York  
Rock Hill  
Greenwood Division  
Counties: Abbeville, Edgefield, Greenwood, McCormick, Newberry, and Saluda  
Greenwood  
Anderson Division  
Counties: Anderson, Oconee, and Pickens  
Anderson  
Spartanburg Division  
Counties: Cherokee, Spartanburg, and Union  
Spartanburg

## SOUTH DAKOTA

District: entire state  
Northern Division  
Counties: Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Edmunds, Grant, Hamlin, McPherson, Marshall, Roberts, Spink,



Walworth and Ziebach; also Sisseton and Wahpeton Indian Reservation, and that portion of Standing Rock Reservation lying in South Dakota

Aberdeen

Southern Division

Counties: Aurora, Beadle, Bon Homme, Brookings, Brule, Charles Mix, Clay, Davison, Douglas, Gregory, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCork, Miner, Minnehaha, Moody, Sanborn, Turner, Union, Yankton, and the Yankton Indian Reservation  
Sioux Falls

Central Division

Counties: Armstrong, Buffalo, Dewey, Faulk, Haakon, Hand, Hughes, Hyde, Jackson, Jerauld, Jonas, Lyman, Potter, Stanley, Sully; also Cheyenne River, Lower Brule, and Crow Creek Indian Reservations  
Pierre

Western Division

Counties: Bennett, Butte, Custer, Fall River, Harding, Lawrence, Meade, Mellette, Pennington, Perkins, Shannon, Todd, Tripp, Washa-  
baugh, Washington, and the Rosebud and Pine Ridge Indian Reser-  
vations  
Deadwood

TENNESSEE

Eastern District

Northern Division

Counties: Anderson, Blount, Campbell, Claiborne, Grainger, Jefferson, Knox, Loudon, Morgan, Monroe, Roane, Scott, Sevier, and Union  
Knoxville

Southern Division

Counties: Bledsoe, Bradley, Hamilton, McMinn, Marion, Meigs, Polk, Rhea, and Sequatchie  
Chattanooga

Northeastern Division

Counties: Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, John-  
son, Sullivan, Unicoi, and Washington  
Greenville

Middle District

Nashville Division

Counties: Bedford, Cannon, Cheatham, Davidson, Dickson, Hickman, Houston, Humphreys, Montgomery, Robertson, Rutherford, Stewart, Sumner, Trousdale, Williamson, and Wilson  
Nashville

Winchester Division

Counties: Franklin, Warren, Grundy, Coffee, and Moore  
Winchester

Columbia Division

Counties: Giles, Lawrence, Lewis, Lincoln, Marshall, Wayne, and Maury  
Columbia

Northeastern Division

Counties: Clay, Cumberland, Dekalb, Fentress, Jackson, Macon, Over-  
ton, Pickett, Putnam, Smith, Van Buren, and White  
Cookeville

## Western District

## Eastern Division

Counties: Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry, and Weakley, including the waters of the Tennessee River to low-water mark on the eastern shore thereof wherever such river forms the boundary line between the western and middle districts of Tennessee from the north line of the State of Alabama north to the point in Henry County, Tenn., where the south boundary line of the State of Kentucky strikes the east bank of the river

## Jackson

## Western Division

Counties: Dyer, Fayette, Haywood, Lauderdale, Shelby, and Tipton  
Memphis

## TEXAS

## Northern District

## Dallas Division

Counties: Dallas, Ellis, Hunt, Johnson, Kaufman, Navarro, and Rockwall  
Dallas

## Fort Worth Division

Counties: Comanche, Erath, Hood, Jack, Palo Pinto, Parker, Tarrant, and Wise  
Fort Worth

## Abilene Division

Counties: Borden, Callahan, Dawson, Eastland, Fisher, Garza, Haskell, Howard, Jones, Kent, Lynn, Mitchell, Nolan, Scurry, Shackelford, Stephens, Stonewall, Taylor, Terry, Throckmorton, and Yoakum.  
Abilene

## Amarillo Division

Counties: Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchison, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler  
Amarillo

## San Angelo Division

Counties: Brown, Coke, Coleman, Concho, Crockett, Glasscock, Irion, Menard, Mills, Reagan, Runnels, Schleicher, Sterling, Sutton, and Tom Green  
San Angelo

## Wichita Falls Division

Counties: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Montague, King, Knox, Wichita, Wilbarger, and Young  
Wichita Falls

## Southern District

## Galveston Division

Counties: Austin, Fort Bend, Matagorda, Wharton, Brazoria, Galveston and Chambers  
Galveston

**Houston Division**

Counties: Brazos, Colorado, Fayette, Grimes, Harris, Lavaca, Madison, Montgomery, Polk, San Jacinto, Trinity, Walker, and Waller  
Houston

**Laredo Division**

Counties: Jim Hogg, La Salle, McMullen, Webb, and Zapata  
Laredo

**Brownsville Division**

Counties: Cameron, Hidalgo, and Starr  
Brownsville

**Victoria Division**

Counties: Calhoun, Dewitt, Goliad, Jackson, Refugio, and Victoria  
Victoria

**Corpus Christi Division**

Counties: Bee, Live Oak, Aransas, San Patricio, Nueces, Jim Wells, Duval, Brooks, Kenedy, Kleberg, and Willacy  
Corpus Christi

**Eastern District****Tyler Division**

Counties: Anderson, Angelina, Cherokee, Gregg, Henderson, Houston, Nacogdoches, Panola, Rains, Rusk, Smith, Van Zandt, and Wood  
Tyler

**Jefferson Division**

Counties: Camp, Cass, Harrison, Hopkins, Marion, Morris, and Upshur  
Jefferson

**Beaumont Division**

Counties: Hardin, Jasper, Jefferson, Liberty, Newton, Orange, Sabine, San Augustine, Shelby, and Tyler  
Beaumont

**Sherman Division**

Counties: Collin, Cooke, Denton, Grayson, and Montague  
Sherman

**Paris Division**

Counties: Delta, Fannin, Lamar, and Red River  
Paris

**Texarkana Division**

Counties: Bowie, Franklin, and Titus  
Texarkana

**Western District****Austin Division**

Counties: Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington, and Williamson  
Austin

**Waco Division**

Counties: Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson, and Somervell  
Waco

**San Antonio Division**

Counties: Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, Real, and Wilson  
San Antonio

## El Paso Division

Counties: Brewster, El Paso, Presidio, and Hudspeth

## El Paso

## Del Rio Division

Counties: Kinney, Maverick, Terrell, Uvalde, Val Verde, and Zavalla

## Del Rio

## Pecos Division

Counties: Reeves, Ward, Martin, Winkler, Ector, Gaines, Andrews, Upton, Midland, Loving, Jeff Davis, Crane, and Pecos

## Pecos

## UTAH

## District: entire state

## Northern Division

Counties: Boxelder, Cache, Davis, Morgan, Rich and Weber

## Ogden

## Central Division

Counties: Beaver, Carbon, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Piute, Salt Lake, San Juan, San Pete, Sevier-Summit, Tooele, Uinta, Utah, Wasatch, Washington, Wayne, and Daggett

## Daggett

## Salt Lake City

## VERMONT

## District: entire state

## Burlington

## Windsor

## Rutland

## Brattleboro

## Newport

## Montpelier

## VIRGINIA

## Eastern District

Counties: Accomac, Amelia, Arlington, Brunswick, Caroline, Charles City, Chesterfield, Culpeper, Dinwiddie, Elizabeth City, Essex, Fairfax, Fauquier, Gloucester, Goochland, Greenesville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Orange, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warwick, Westmoreland, and York

## Richmond

## Norfolk

## Alexandria

## Western District

Counties: Albemarle, Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Dickenson, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax,

Henry, Highland, Lee, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Pittsylvania, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe

Lynchburg

Roanoke

Danville

Charlottesville

Harrisonburg

Big Stone Gap

Abingdon

#### WASHINGTON

##### Eastern District

##### Northern Division

Counties: Adams, Spokane, Lincoln, Douglas, Grant, Chelan, Okanogan, Pend, Oreille, Ferry, and Stevens

Spokane

##### Southern Division

Counties: Asotin, Garfield, Columbia, Walla Walla, Franklin, Yakima, Benton, Klickitat, Kittitas, and Whitman

North Yakima

Walla Walla

##### Western District

##### Northern Division

Counties: Clallam, Island, Jefferson, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom

Seattle

Bellingham

##### Southern Division

Counties: Clarke, Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum

Tacoma

#### WEST VIRGINIA

##### Northern District

Counties: Barbour, Berkeley, Brooke, Calhoun, Doddridge, Gilmer, Grant, Hampshire, Hancock, Hardy, Harrison, Jefferson, Lewis, Marion, Marshall, Mineral, Monongalia, Morgan, Ohio, Pendleton, Pleasants, Preston, Randolph, Ritchie, Taylor, Tucker, Tyler, Upshur, Wetzel, Wirt, and Wood, with the waters thereof

Martinsburg

Clarksburg

Wheeling

Elkins

Parkersburg

##### Southern District

Counties: Jackson, Roane, Clay, Braxton, Webster, Nicholas, Pocahontas, Greenbrier, Fayette, Boone, Kanawha, Putnam, Mason, Cabell, Wayne, Lincoln, Logan, Mingo, Raleigh, Wyoming, McDowell, Mercer, Summers, and Monroe, with the waters thereof

Charleston

Huntington

Bluefield  
Williamson  
Webster Springs  
Lewisburg

## WISCONSIN

## Eastern District

Counties: Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago

Milwaukee  
Oshkosh  
Green Bay

## Western District

Counties: Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Dunn, Douglas, Eau Claire, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, St. Croix, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, and Wood

Madison  
Eau Claire  
La Crosse  
Superior

## WYOMING

## District: Entire State and Yellowstone National Park

Cheyenne  
Evanston  
Lander  
Sheridan  
Yellowstone National Park

## APPENDIX 4

### ATTORNEYS GENERAL AND SOLICITORS GENERAL

#### (A) ATTORNEYS GENERAL <sup>1</sup>

	<i>Appointed</i>	<i>Retired</i>	<i>Whence Appointed</i>	<i>President</i>
Edmund Randolph .....	Sept. 26, 1789	Jan. 2, 1794	Va.	Washington
William Bradford .....	Jan. 27, 1794	Aug. 23, 1795	Pa.	"
Charles Lee .....	Dec. 10, 1795	Feb. 18, 1801	Va.	Washington and John Adams
Levi Lincoln .....	Mar. 5, 1801	Mar. 3, 1805	Mass.	Jefferson
John Breckenridge .....	Aug. 7, 1805	Dec. 14, 1806	Ky.	"
Caesar A. Rodney .....	Jan. 20, 1807	Dec. 11, 1811	Del.	Jefferson and Madison
William Pinkney .....	Dec. 11, 1811	Feb. 10, 1814	Md.	Madison
Richard Rush .....	Feb. 10, 1814	Nov. 13, 1817	Pa.	"
William Wirt .....	Nov. 13, 1817	Mar. 3, 1829	Va.	Monroe and John Q. Adams
John M. Berrien .....	Mar. 9, 1829	July 20, 1831	Ga.	Jackson
Roger B. Taney .....	July 20, 1831	Sept. 24, 1833	Md.	"
Benjamin F. Butler .....	Nov. 15, 1833	Sept. 1, 1838	N. Y.	Jackson and Van Buren
Felix Grundy .....	<sup>2</sup> July 5, 1838	Dec. 1, 1839	Tenn.	Van Buren
Henry D. Gilpin .....	Jan. 11, 1840	Mar. 4, 1841	Pa.	"
John J. Crittenden .....	Mar. 5, 1841	Sept. 13, 1841	Ky.	Harrison and Tyler
Hugh S. Legare .....	Sept. 13, 1841	June 20, 1843	S. C.	Tyler
John Nelson .....	July 1, 1843	Mar. 3, 1845	Md.	"
John Y. Mason .....	Mar. 6, 1845	Sept. 9, 1846	Va.	Polk
Nathan Clifford .....	Oct. 17, 1846	Mar. 17, 1848	Me.	"
Isaac Toucey .....	June 21, 1848	Mar. 3, 1849	Conn.	"
Reverdy Johnson .....	Mar. 8, 1849	July 20, 1850	Md.	Taylor

<sup>1</sup> The names of Theophilus Parsons, Robert Smith, Joseph Holt, and Orville H. Browning are omitted.

Theophilus Parsons, of Massachusetts, was nominated on February 18, 1801, as Attorney General in place of Charles Lee, and was confirmed by the Senate, but no commission was issued, as he declined to accept the office.

Robert Smith, of Maryland, who had been Secretary of the Navy for four years, was a lawyer and was anxious to be Attorney General. Jefferson agreed to appoint him provided a suitable Secretary of the Navy could be secured. Accordingly, on March 2, 1805, he nominated Robert Smith as Attorney General, and Jacob Crowninshield, of Massachusetts, as Secretary of the Navy. Both nominations were confirmed, and commissions were issued on March 3, but Crowninshield declined to accept the office tendered him. Robert Smith continued to act as Secretary of the Navy, and never took the oath of office or performed any duties as Attorney General. See 3 Cranch's Reports iii.

Joseph Holt, of Kentucky, was appointed Attorney General on December 1, 1864. He declined to accept the office.

Stanbery resigned on March 12, 1868, in order to serve as one of the counsel of President Johnson in the impeachment proceedings before the Senate. It was the President's intention to reappoint him after the trial, so, instead of appointing a successor to Stanbery, he appointed Browning, Secretary of the Interior, Attorney General interim, and directed him to perform the duties of that office in addition to his own as Secretary of the Interior.

<sup>2</sup> To take effect September 1, 1838.

# ATTORNEYS- AND SOLICITORS-GENERAL 261

	<i>Appointed</i>	<i>Retired</i>	<i>Whence Appointed</i>	<i>President</i>
John J. Crittenden .....	July 22, 1850	Mar. 3, 1853	Ky.	Fillmore
Caleb Cushing .....	Mar. 7, 1853	Mar. 3, 1857	Mass.	Pierce
Jeremiah S. Black .....	Mar. 6, 1857	Dec. 17, 1860	Pa.	Buchanan
Edwin M. Stanton .....	Dec. 20, 1860	Mar. 3, 1861	Ohio	"
Edward Bates .....	Mar. 5, 1861	Sept. —, 1864	Mo.	Lincoln
James Speed .....	Dec. 2, 1864	July 17, 1866	Ky.	Lincoln and Johnson
Henry Stanbery .....	July 23, 1866	Mar. 12, 1868	Ohio	Johnson
William M. Evarts .....	July 15, 1868	Mar. 3, 1869	N. Y.	"
Ebenezer R. Hoar .....	Mar. 5, 1869	June 23, 1870	Mass.	Grant
Amos T. Akerman .....	June 23, 1870	Jan. 10, 1872	Ga.	"
George H. Williams .....	Dec. 14, 1871	May 15, 1875	Ore.	"
Edwards Pierrepont .....	Apr. 26, 1875	May 22, 1876	N. Y.	"
Alphonso Taft .....	May 22, 1876	Mar. 11, 1877	Ohio	"
Charles Devens .....	Mar. 12, 1877	Mar. 6, 1881	Mass.	Hayes
Wayne MacVeagh .....	Mar. 5, 1881	Oct. 24, 1881	Pa.	Garfield
Benjamin H. Brewster .....	Dec. 19, 1881	Mar. 5, 1885	Pa.	Arthur
Augustus H. Garland .....	Mar. 6, 1885	Mar. 5, 1889	Ark.	Cleveland
William H. H. Miller .....	Mar. 5, 1889	Mar. 6, 1893	Ind.	Harrison
Richard Olney .....	Mar. 6, 1893	June 7, 1895	Mass.	Cleveland
Judson Harmon .....	June 8, 1895	Mar. 5, 1897	Ohio	"
Joseph McKenna .....	Mar. 5, 1897	Jan. 25, 1898	Calif.	McKinley
John W. Griggs .....	Jan. 25, 1898	Mar. 29, 1901	N. J.	"
Philander C. Knox .....	Apr. 5, 1901	June 30, 1904	Pa.	"
William H. Moody .....	July 1, 1904	Dec. 17, 1906	Mass.	Roosevelt
Charles J. Bonaparte .....	Dec. 17, 1906	Mar. 4, 1909	Md.	"
George W. Wickersham .....	Mar. 5, 1909	Mar. 5, 1913	N. Y.	Taft
James C. McReynolds .....	Mar. 5, 1913	Aug. 29, 1914	Tenn.	Wilson
Thomas Watt Gregory .....	Aug. 29, 1914	Mar. 4, 1919	Texas	"
A. Mitchell Palmer .....	Mar. 5, 1919	Mar. 5, 1921	Pa.	"
Harry M. Daugherty .....	Mar. 5, 1921	Mar. 28, 1924	Ohio	Harding
Harlan Fiske Stone .....	Apr. 7, 1924	Mar. 1, 1925	N. Y.	Coolidge
John Garibaldi Sargeant .....	Mar. 17, 1925	.....	Vt.	"

## (B) SOLICITORS GENERAL

Benjamin H. Bristow .....	Oct. 11, 1870	Nov. 15, 1872	Ky.	Grant
Samuel F. Phillips .....	Nov. 15, 1872	May 3, 1885	N. C.	"
John Goode .....	May 1, 1885	Aug. 5, 1886	Va.	Cleveland
George A. Jenks .....	July 30, 1886	May 29, 1889	Pa.	"
Orlow W. Chapman .....	May 29, 1889	Jan. 19, 1890	N. Y.	Harrison
William H. Taft .....	Feb. 4, 1890	Mar. 20, 1892	Ohio	"
Charles H. Aldrich .....	Mar. 21, 1892	May 28, 1893	Ill.	"
Lawrence Maxwell, Jr. ....	Apr. 6, 1893	Jan. 30, 1895	Ohio	Cleveland
Holmes Conrad .....	Feb. 6, 1895	July 8, 1897	Va.	"
John K. Richards .....	July 1, 1897	Mar. 16, 1903	Ohio	McKinley
Henry M. Hoyt .....	Feb. 25, 1903	Mar. 31, 1909	Pa.	Roosevelt
Lloyd Wheaton Bowers .....	Apr. 1, 1909	Sept. 9, 1910	Ill.	Taft
Frederick W. Lehmann .....	Dec. 12, 1910	July 15, 1912	Mo.	"
William Marshall Bullitt .....	July 16, 1912	Mar. 11, 1913	Ky.	"
John William Davis .....	Aug. 30, 1913	Nov. 26, 1919	W. Va.	Wilson
Alexander C. King .....	Nov. 27, 1918	May 23, 1920	Ga.	"
William L. Frierson .....	June 1, 1920	June 30, 1921	Tenn.	"
James M. Beek .....	June 30, 1921	June 7, 1925	N. J.	Harding
William D. Mitchell .....	June 4, 1925	.....	Minn.	Coolidge

<sup>3</sup> To take effect January 10, 1872.

<sup>4</sup> To take effect May 15, 1875.

<sup>5</sup> Resigned September 22, 1881.

<sup>6</sup> Oath of office January 2, 1882.

<sup>7</sup> Took oath of office and entered on duty March 16, 1903.



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## TABLE OF CITATIONS

### (A) CASES

	<i>Page</i>
Ah Teung, <i>People v.</i> , 92 Calif. 421.....	22
	84
Alexander, <i>Ware v.</i> , 2 F(2d) 895, 5 F(2d) 964.....	174
Anderson, <i>In re</i> , 94 Fed. 487.....	22
	84
Baker, <i>Emerson v.</i> , 3 F(2d) 830.....	173
Bank of New South Wales v. Piper, [1897] A. C. 383.....	112
Bank of United States v. Bank of Washington, 6 Peters 8.....	168
Barber, <i>Hetfield v.</i> 2 F(2d) 723, 4 F(2d) 245.....	173
Beebe, <i>United States v.</i> , 127 U. S. 338.....	114
Beebe, <i>United States v.</i> , 180 U. S. 351.....	64
Bell Telephone Co., <i>United States v.</i> , 128 U. S. 315.....	114
Berry, <i>Denby v.</i> , 263 U. S. 29.....	155
Confiscation Cases, 7 Wallace 454.....	113
Cowdery, <i>In re</i> , 61 Calif. 128.....	78
Cox, <i>McCarl v.</i> , 8 F(2d) 669, 270 U. S. 652.....	174
Crosthwaite, <i>United States v.</i> , 168 U. S. 375.....	70
Daniels, <i>Ex rel. Harris v.</i> , 279 Fed. 844.....	168
Decatur v. Paulding, 14 Peters 497.....	145
	161
Denby v. Berry, 263 U. S. 29.....	155
Dillon v. Gross, 299 Fed. 851.....	174
Dock Contractor Co., <i>Petty and Co. v.</i> , 283 Fed. 341.....	84
Doughty, <i>United States v.</i> , 25 Fed. Cas. 14986.....	75
Downing, <i>Roberston v.</i> , 127 U. S. 607.....	167
DuBois v. <i>United States</i> , 25 Ct. Cl. 195.....	22
	84
Eliason, <i>United States v.</i> , 16 Peters 291.....	161
Elliott, <i>Howe v.</i> , 300 Fed. 243.....	174
Emerson v. Baker, 3 F(2d) 830.....	173
Fish v. <i>United States</i> , 36 Fed. 677.....	73
	76
Fleming, <i>United States v.</i> , 80 Fed. 372.....	73
Garter v. <i>United States</i> , 170 U. S. 527.....	76
Gaulden v. <i>State</i> , 11 Ga. 47.....	78
Gray Jacket, 5 Wallace 370.....	113
Gross, <i>Dillon v.</i> , 299 Fed. 851.....	174
Grossman, <i>Ex parte</i> , 267 U. S. 87.....	3
Harris, <i>Ex rel. v. Daniels</i> , 279 Fed. 844.....	168
Harrison v. Voss, 9 Howard 372.....	155



	<i>Page</i>
Healy, United States v., 160 U. S. 136.....	167
Helborn v. United States, 163 U. S. 342.....	75
Henrick, <i>In re</i> , 11 Fed. Cas. 6369.....	22
	84
Hermanos, United States v., 209 U. S. 337.....	167
Heffield v. Barber, 2 F(2d) 723, 4 F(2d) 245.....	173
Hillyer, United States v., 1 Alaska 47.....	22
	85
Howe v. Elliott, 300 Fed. 243.....	174
Jackson, Smith v., 241 Fed. 747, 246 U. S. 388.....	154
	156
	169
	173
Jobbins v. Montague, 13 Fed. Cas. 7329.....	22
	84
Johnson, People v., 40 Colo. 460.....	78
Johnston, United States v., 124 U. S. 236.....	161
Jones, United States v., 18 Howard 92.....	161
Kendall v. United States, 12 Peters 524.....	61
	173
Laura, The, 114 U. S. 411.....	120
Luke, Voss v., 1 Cranch 331.....	81
McCarl v. Cox, 8 F(2d) 669, 270 U. S. 652.....	174
McCarl, Wyllly v., 2 F(2d) 897, 5 F(2d) 964.....	174
McCarl, Margulies and Sons v., 10 F(2d) 1012.....	173
McPherson v. United States, 245 Fed. 35.....	75
Margulies and Sons v. McCarl, 10 F(2d) 1012.....	173
Marquard, Ex parte, 2 Gall. 552.....	120
Martin v. Matt, 12 Wheaton 19.....	161
Montague, Jobbins v., 13 Fed. Cas. 7329.....	22
	84
Morris's Cotton, 8 Wallace 507.....	168
National Lead Co. v. United States, 252 U. S. 140.....	167
Osborn v. United States, 91 U. S. 474.....	120
Paulding, Decatur v., 14 Peters 497.....	145
	161
People v. Ah Teung, 92 Calif. 421.....	22
	84
People v. Johnson, 40 Colo. 460.....	78
Perry v. United States, 28 Ct. Cl. 483.....	21
Petty and Co. v. Dock Contractor Co., 283 Fed. 341.....	84
Piper, Bank of New South Wales v., [1897] A. C. 383.....	112
Powell v. United States, 60 Fed. 687.....	86
Priddie v. Thompson, 82 Fed. 186.....	86
Regina v. Tolson, 23 Q. B. D. 168.....	111
Robertson v. Downing, 127 U. S. 607.....	167
Rosenthal, United States v., 121 Fed. 862.....	78
San Jacinto Tin Co., United States v., 125 U. S. 273.....	114
Schurz, United States v., 102 U. S. 378.....	173

# TABLE OF CITATIONS

279

	<i>Page</i>
Smith v. Jackson, 241 Fed. 747, 246 U. S. 388.....	154
	156
	169
	173
Smith, United States v., 158 U. S. 346.....	75
State, Gaulden v., 11 Ga. 47.....	78
State, Wilson v., 16 Ind. 392.....	78
Thompson, Priddie v., 82 Fed. 186.....	86
Three Friends, The, 166 U. S. 1.....	155
Tolson, Regina v., 23 Q. B. D. 168.....	111
Townsend v. United States, 22 Ct. Cl. 208.....	70
United States v. Beebe, 127 U. S. 338.....	114
United States v. Beebe, 180 U. S. 351.....	64
United States v. Bell Telephone Co. 128 U. S. 315.....	114
United States v. Crosthwaite, 168 U. S. 375.....	70
United States v. Doughty, 25 Fed. Cas. 14986.....	75
United States, DuBois v., 25 Ct. Cl. 195.....	22
	84
United States v. Eliason, 16 Peters 291.....	161
United States, Fish v., 36 Fed. 677.....	73
	76
United States v. Fleming, 80 Fed. 372.....	73
United States, Garter v., 170 U. S. 527.....	76
United States v. Healy, 160 U. S. 136.....	167
United States, Helborn v., 163 U. S. 342.....	75
United States v. Hermanos, 209 U. S. 337.....	167
United States v. Hillyer, 1 Alaska 47.....	22
	85
United States v. Johnston, 124 U. S. 236.....	161
United States v. Jones, 18 Howard 92.....	161
United States, Kendall v., 12 Peters 524.....	61
	173
United States, McPherson v., 245 Fed. 35.....	75
United States, National Lead Co. v., 252 U. S. 140.....	167
United States, Osborn v., 91 U. S. 474.....	120
United States, Perry v., 28 Ct. Cl. 483.....	21
United States, Powell v., 60 Fed. 687.....	86
United States v. Rosenthal, 121 Fed. 862.....	78
United States v. San Jacinto Tin Co., 125 U. S. 273.....	114
United States v. Schurz, 102 U. S. 378.....	173
United States v. Smith, 158 U. S. 346.....	75
United States, Townsend v., 22 Ct. Cl. 208.....	70
United States v. Waters, 133 U. S. 215.....	161
Voss, Harrison v., 9 Howard 372.....	155
Voss v. Luke, 1 Cranch 331.....	84
Ware v. Alexander, 2 F(2d) 895, 5 F(2d) 964.....	174
Waters, United States v., 133 U. S. 215.....	161
Wilson v. State, 16 Ind. 392.....	78
Wylly v. McCarl, 2 F(2d) 897, 5 F(2d) 964.....	174

## (B) OPINIONS OF THE ATTORNEY GENERAL

<i>Reference</i>			<i>Reference</i>		
<i>Vol.</i>	<i>Page</i>	<i>Page</i>	<i>Vol.</i>	<i>Page</i>	<i>Page</i>
1	211.....	128	11	189.....	132
	253.....	129			137
	335.....	129		206.....	130
	346.....	130			131
	575.....	132		407.....	131
2		134			139
	311.....	134		431.....	133
	482.....	113	12	433.....	128
	500.....	129			132
	531.....	128		472.....	117
3	39.....	132		536.....	117
	309.....	131		543.....	120
	310.....	130		544.....	129
		133		546.....	129
	368.....	134	13	160.....	139
4		151		177.....	155
	684.....	116		479.....	63
	573.....	120			117
	97.....	152		525.....	117
5	390.....	152		531.....	132
	561.....	129		535.....	133
	626.....	131		540.....	63
		132			116
	658.....	117	14	8.....	117
6	24.....	25		17.....	129
		129		21.....	128
	147.....	128		36.....	131
	289.....	128		42.....	117
	326.....	7		45.....	130
8		129		55.....	130
		130		178.....	129
		137		179.....	116
		150		191.....	132
		152			134
9	399.....	75		367.....	131
	32.....	153		526.....	130
	82.....	132		536.....	130
	335.....	135		568.....	132
	422.....	132	15	138.....	129
10	122.....	133			132
	164.....	129		476.....	129
	220.....	134		574.....	130
	267.....	131		41.....	117
	347.....	139	16	94.....	131
	452.....	120		249.....	117
	458.....	128		259.....	120

# TABLE OF CITATIONS

281

<i>Reference</i>			<i>Reference</i>		
<i>Vol.</i>	<i>Page</i>	<i>Page</i>	<i>Vol.</i>	<i>Page</i>	<i>Page</i>
16	385.....	120	20	160.....	134
	484.....	116		178.....	136
	570.....	120		210.....	140
	617.....	120		220.....	129
					131
17	142.....	66		249.....	131
	213.....	117			136
		120		251.....	132
	324.....	129		255.....	131
	333.....	153		258.....	131
	339.....	161		270.....	131
	357.....	129		277.....	139
	57.....	57		279.....	159
		60		312.....	134
		61		314.....	134
		128			139
		135		369.....	141
	59.....	60		383.....	129
		128			134
		132			139
		133			153
		135		384.....	130
	72.....	120		391.....	140
	77.....	133		440.....	132
	87.....	129		461.....	130
	108.....	75		463.....	135
	187.....	129		465.....	132
	277.....	63			135
		116		487.....	130
		120		493.....	131
	487.....	131		494.....	130
	521.....	130		500.....	135
	7.....	134		524.....	140
	56.....	144		526.....	131
	59.....	139		530.....	120
	332.....	132			130
	344.....	120		536.....	132
	396.....	131		539.....	141
	414.....	132		583.....	132
	465.....	131		588.....	132
	556.....	134		591.....	130
	598.....	134		602.....	132
	670.....	139		608.....	128
	672.....	131			133
	678.....	132		609.....	135
	695.....	133		615.....	132
	696.....	131		618.....	141
	20	50.....			144
		128.....			
		161			

<i>Reference</i>		
<i>Vol.</i>	<i>Page</i>	<i>Page</i>
20	640.....	131
	648.....	148
		153
	654.....	60
		154
	667.....	134
	673.....	131
		139
	685.....	120
	697.....	130
	699.....	131
	702.....	129
		130
		139
	703.....	132
	711.....	130
		131
	714.....	5
		60
		61
		136
	719.....	154
	723.....	135
	724.....	131
		134
	727.....	117
		120
	728.....	132
	729.....	132
	738.....	132
	740.....	130
	742.....	130
21	24.....	137
	25.....	138
	36.....	131
	50.....	120
	58.....	131
	73.....	130
	80.....	130
	90.....	117
	97.....	131
	101.....	117
	106.....	132
	109.....	132
	129.....	131
	134.....	131
		136
	169.....	132
	174.....	130
		133
		136

<i>Reference</i>		
<i>Vol.</i>	<i>Page</i>	<i>Page</i>
21	178.....	132
		159
		171
	179.....	130
		131
	181.....	159
		160
	186.....	132
	188.....	159
		160
	201.....	132
	202.....	131
	219.....	132
	220.....	131
	221.....	159
	224.....	160
	240.....	130
		132
	255.....	130
		131
	260.....	131
	264.....	120
		137
	283.....	117
	289.....	117
	320.....	132
	361.....	120
	377.....	130
	402.....	160
	405.....	159
		171
	418.....	117
	423.....	159
	437.....	132
	454.....	130
	478.....	132
	481.....	130
	486.....	131
	494.....	116
		120
	506.....	131
		132
	509.....	129
		130
		132
	510.....	132
	530.....	159
	531.....	141
		159
		171
	549.....	117

# TABLE OF CITATIONS

283

<i>Reference</i>			<i>Reference</i>		
<i>Vol.</i>	<i>Page</i>	<i>Page</i>	<i>Vol.</i>	<i>Page</i>	<i>Page</i>
21	558.....	117	23	586.....	159
		139		631.....	120
		150	24	53.....	137
	569.....	132		59.....	131
	583.....	131			132
		132			141
	594.....	130			144
	724.....	136	25	69.....	142
	22	77.....			144
		85.....		74.....	144
22		131		85.....	159
		132		102.....	131
	99.....	130		118.....	132
	156.....	130		553.....	159
	181.....	140		556.....	132
	189.....	131		583.....	117
	342.....	131		669.....	160
	352.....	131		50.....	159
	477.....	131		81.....	159
	491.....	113		94.....	140
23		117		96.....	132
		120		97.....	140
	498.....	131		127.....	160
	581.....	141		179.....	132
		159		183.....	130
	665.....	159		185.....	159
	1	159		231.....	130
		159		271.....	160
	18.....	120		301.....	160
	30.....	160			172
23	86.....	159		302.....	154
	92.....	131			161
	161.....	160		369.....	132
	178.....	131			142
	221.....	139		422.....	129
		144		493.....	127
	231.....	132		535.....	117
	329.....	160		543.....	132
	330.....	132			136
	364.....	126	26	584.....	132
23	390.....	160		601.....	160
	437.....	159		614.....	159
	468.....	159		77.....	62
	472.....	131		81.....	160
	507.....	117		247.....	160
		120		269.....	160
	521.....	131		336.....	160
	582.....	132		378.....	131
	585.....	139		379.....	130
		144			

<i>Reference</i>		<i>Page</i>	<i>Reference</i>		<i>Page</i>
<i>Vol.</i>	<i>Page</i>		<i>Vol.</i>	<i>Page</i>	
26	421.	130	30	88.	126
	431.	159			145
	460.	160		314.	154.
	522.	127			160
	604.	130		316.	132
	609.	131		329.	117
		160		376.	154
	631.	132			162
		142		381.	131
		160			143
27		161	31	569.	134
	37.	132		127.	135
	38.	135		235.	136
	49.	132		320.	160
	120.	127			162
	221.	161	32	459.	117
	261.	160		145.	131
28	47.	131		162.	144
	52.	131		221.	134
	127.	130		239.	131
	129.	132		270.	131
		159		427.	160
		172		472.	139
	219.	131			144
	239.	130	33	532.	135
		132		541.	131
	293.	135		556.	131
29	393.	134		563.	131
	394.	131		18.	144
	431.	127		86.	144
		134		162.	169
		135		226.	130
	466.	160		265.	169
	531.	129		268.	169
	534.	135			172
	596.	132		311.	134
		143	34	354.	134
29		150		383.	162
	46.	132			169
	48.	160		460.	131
	51.	160		473.	139
	99.	132		510.	145
	217.	63		162.	156
	226.	136			169
		143		250.	166
	293.	135		346.	167
	303.	136		517.	154
29	488.	132			156
	494.	136			
	588.	132			

# TABLE OF CITATIONS

285

## (C) DECISIONS OF THE COMPTROLLER OF THE TREASURY

Reference		Page	Reference		Page
Vol.	Page		Vol.	Page	
2	241.....	161	15	584.....	161
4	490.....	71	17	263.....	161
	587.....	161	19	617.....	161
5	410.....	161	20	69.....	161
14	143.....	161	21	539.....	161
	167.....	161			

## (D) DECISIONS OF THE COMPTROLLER GENERAL

2	6.....	169	3	772.....	170
	224.....	169	4	719.....	116
	784.....	170	5	688.....	172

## (E) REVISED STATUTES

Section	Page	Section	Page
176.....	65	359.....	19
179.....	36		39
	148		75
189.....	21		78
190.....	78	360.....	19
202.....	61		59
205.....	63		75
	116	361.....	21
347.....	36		59
349.....	57		121
	60		128
350.....	59		135
	61		147
354.....	126	362.....	19
	127		22
	128		76
	147		84
355.....	20		121
	47	363.....	70
356.....	127	364.....	20
	132	365.....	70
	133	366.....	70
	147	367.....	19
357.....	128		78
	132		121
	133	368.....	74
358.....	26		87
	128		93
	136	370.....	73
	147		74
	148	371.....	30
	153	372.....	61



<i>Section</i>	<i>Page</i>	<i>Section</i>	<i>Page</i>
373.....	63	791.....	66
374.....	63		84
375.....	63	792.....	89
376.....	61	793.....	82
377.....	64	794.....	93
	66	797.....	66
	79		95
	84	830.....	85
379.....	66	832.....	88
	78	833.....	87
380.....	62		94
	79	838.....	79
381.....	61		80
	80		123
382.....	61	839.....	94
384.....	13	843.....	69
	25		82
385.....	25		92
390.....	57	845.....	94
409.....	63	846.....	74
	116		87
410.....	64	855.....	85
	116	856.....	87
524.....	65	904.....	92
561.....	92	942.....	64
677.....	82	983.....	75
680.....	82	1053.....	95
	83	1055.....	95
	85	1057.....	66
	87	1342.....	124
767.....	68	1624.....	54
	75	1757.....	63
769.....	68	1766.....	62
771.....	73		175
	75	1875.....	81
	79	1876.....	88
	124	1877.....	81
772.....	66		88
	78	1893.....	89
773.....	66	1958.....	119
	78	1980.....	52
774.....	80	1981.....	52
775.....	80	1982.....	123
	87	2045.....	124
	88	2105.....	124
776.....	82	2232.....	123
779.....	82	2450.....	25
783.....	83	2451.....	25
787.....	83	2984.....	64
788.....	83	3001.....	64
789.....	83	3076.....	124
	86	3083.....	63

# TABLE OF CITATIONS

287

<i>Section</i>	<i>Page</i>	<i>Section</i>	<i>Page</i>
3085.....	79	3751.....	65
3115.....	64	3753.....	65
3143.....	65	3929.....	206
3208.....	64	4041.....	206
3215.....	66	4146.....	118
	79	4300.....	124
	89	4610.....	124
3217.....	62	4618.....	124
	84	4619.....	79
3229.....	63		124
	117	4623.....	89
	191	5133-98.....	54
3230.....	79	5294.....	118
3469.....	63	5311.....	125
	120	5498.....	78
3470.....	64	5537.....	84
3471.....	64	5538.....	84
3472.....	119	5544.....	107
3492.....	123	5545.....	85
3600.....	65		88
3625.....	62		98
3633.....	61	5547.....	98
3634.....	61	5549.....	97
3749.....	65	5579.....	25
3750.....	65		

## (F) STATUTES AT LARGE

<i>Reference</i>					<i>Page</i>
<i>Vol.</i>	<i>Date</i>	<i>Chap.</i>	<i>Sec.</i>	<i>Page</i>	
1	1789, Sept. 24	20	35	93 .....	2
					133
					148
	1797, Mar. 3	20	1	512 .....	4
			3	512 .....	4
3	1818, Apr. 20	87	6	447 .....	4
	1819, Mar. 3	54	1	500 .....	4
	1820, Apr. 11	40	1	560 .....	6
	May 15	107	1	592 .....	5
	1821, Mar. 3	34	1	632 .....	6
4	1824, May 26	173	9	55 .....	2
	1830, May 29	153	—	414 .....	5
	1831, Mar. 2	55	—	455 .....	6
5	1836, July 2	270	14	82 .....	9
					61
			16	83 .....	61
	July 4	352	5	111 .....	8
	1839, Feb. 28	22	—	321 .....	64
	1840, May 8	22	—	377 .....	6

<i>Reference</i>					
<i>Vol.</i>	<i>Date</i>	<i>Chap.</i>	<i>Sec.</i>	<i>Page</i>	<i>Page</i>
5	1844, June 12	45	—	662	8
10	1853, Mar. 3	97	4	212	3
	1854, Aug. 4	242	1	558	6
	1855, Feb. 24	122	2	612	8
	Mar. 3	175	1	656	6
11	1859, Mar. 3	80	1	420	7
12	1860, June 23	205	1	102	208
	1861, Aug. 2	37	—	285	8
	Aug. 6	65	—	327	8
	1863, Feb. 20	44	3	656	9
13	1864, June 3	106	—	99	44
	July 2	210	3	351	208
	1865, Mar. 2	76	—	468	9
14	1866, July 13	184	64	170	9
	July 23	208	5	207	8
	July 25	233	2	226	9
	July 25	238	—	232	15
	July 28	299	36	337	9
	1867, Mar. 3	180	—	543	64
15	1868, June 25	71	5	75	8
	July 20	176	1	103	9
	July 25	233	4	177	9
	1869, Mar. 3	123	—	313	9
16	1869, Apr. 10	15	1	10	9
	1870, June 22	150	—	162	12
			2	162	5
			3	162	9
					57
			7	163	9
					61
			19	165	12
	July 14	254	—	254	48
	1871, Feb. 27	72	—	432	57
17	1872, Mar. 5	30	1	35	14
					15
	June 7	322	—	262	44
	June 8	335	3	284	57
			23	288	61
	1873, Mar. 3	227	—	517	15
18	1874, June 9	260	—	64	44
	June 20	328	1	90	67
				109	25
			2	109	72
					78
	June 20	344	13	128	118
	June 22	391	15	189	123
	June 22	414	—	200	122
	June 23	459	5	246	20
	June 23	465	—	251	99

## TABLE OF CITATIONS

289

Vol.	Reference				Page
	Date	Chap.	Sec.	Page	
18	1875,	Jan. 22	—	303	117
		Feb. 18	1	318	74
	Feb. 22	95	1	333	87
				333	74
				333	87
				333	83
				333	93
				333	75
				333	88
				334	94
				334	14
				334	22
				334	94
				334	94
				334	73
				336	88
	Mar. 1	114	3	336	123
	Mar. 3	130	1	372	65
			8	401	19
	Mar. 3	138	2	469	125
	Mar. 3	167	—	507	148
19	1876,	May 3	—	49	61
		Feb. 27	1	241	98
	1877,	69	1	241	79
				241	80
				241	123
				241	25
				247	63
				249	64
				253	62
				253	25
20	1877, Dec. 14	1	—	7	75
	1878, June	11	6	107	15
		19	—	171	25
		19	1	205	57
		20	1	234	15
	1879, Jan.	31	3	277	92
		Feb. 3	2	279	20
		Mar. 1	2	327	65
	1879, June	30	3	44	95
		4	1	156	25
21	1880, June 4	121	1	156	98
22	1882, July 12	290	—	162	44
	Aug. 2	374	—	186	48
	Aug. 5	389	1	230	208
	Aug. 7	433	1	330	99
	1883, Mar. 3	143	—	631	91
	1884, May	17	11	27	24
		29	—	31	46

<i>Reference</i>						
<i>Vol.</i>	<i>Date</i>	<i>Chapt.</i>	<i>Sec.</i>	<i>Page</i>		<i>Page</i>
23	1884, June 26	121	—	53	.....	44
	1885, Feb. 25	149	2	321	.....	123
24	1886, Jan. 19	4	1	1	.....	18
	June 19	421	—	79	.....	44
			9	81	.....	118
	July 10	764	2	143	.....	122
	July 31	827	1	205	.....	201
	1887, Feb. 4	104	—	379	.....	37
			12	383	.....	125
			16	385	.....	50
						122
						125
			20	386	.....	123
	Mar. 3	340	4	477	.....	123
	Mar. 3	345	4	491	.....	122
	Mar. 3	359	6	506	.....	125
	Mar. 3	376	2	556	.....	122
			4	557	.....	122
25	1888, July 9	595	—	245	.....	15
	Aug. 1	727	1	355	.....	122
	Aug. 1	728	1	357	.....	122
	Aug. 7	772	4	383	.....	122
			6	384	.....	123
	Aug. 8	786	—	387	.....	22
	1889, Mar. 2	382	—	855	.....	37
			3	858	.....	125
			5	859	.....	122
						125
	Mar. 2	411	1	941	.....	20
						65
						68
26	1890, June 10	407	12-17	136	.....	42
			30	142	.....	41
	June 16	426	—	157	.....	54
	July 2	647	—	209	.....	36
						54
			4	209	.....	125
	Aug. 6	724	1	307	.....	98
	Aug. 30	839	—	414	.....	46
	Sept. 19	907	10	454	.....	122
	1891, Feb. 10	128	—	743	.....	37
						125
	Mar. 3	529	4	839	.....	97
			5	839	.....	84
			6	840	.....	109
			8	840	.....	107
			9	840	.....	97
	Mar. 3	538	—	851	.....	39
	Mar. 3	541	1	945	.....	9
						57

## TABLE OF CITATIONS

291

<i>Reference</i>					
<i>Vol.</i>	<i>Date</i>	<i>Chap.</i>	<i>Sec.</i>	<i>Page</i>	<i>Page</i>
27	1892, Aug. 1	352	—	340 .....	45
	1893, Feb. 13	105	—	445 .....	48
	Feb. 15	114	1	449 .....	124
			2	450 .....	124
	Mar. 2	196	—	531 .....	46
			6	532 .....	123
	Mar. 3	209	1	631 .....	124
	1894, Mar. 12	36	—	41 .....	25
	July 31	1721	3	205 .....	171
			4	205 .....	61
28			8	207 .....	62
					158
					171
					172
			12	209 .....	175
			13	210 .....	30
					74
					87
					93
	Aug. 18	299	4	362 .....	45
	Aug. 18	300	—	372 .....	124
	Aug. 27	349	73	570 .....	37
					125
	Dec. 15	7	—	595 .....	118
	1895, Jan. 12	23	10	602 .....	62
	Jan. 16	24	2	624 .....	118
	Feb. 8	61	—	643 .....	37
	Mar. 2	177	5	807 .....	34
					83
					93
29	Mar. 2	189	1	957 .....	11
					98
	1896, Feb. 12	18	—	6 .....	124
	Feb. 26	33	—	25 .....	61
	Mar. 2	37	—	39 .....	118
	Apr. 1	87	—	85 .....	123
	May 28	252	—	179 .....	69
			6	179 .....	13
					68
					75
					82
			7	180 .....	68
			8	181 .....	69
					72
					73
			9	181 .....	82
			10	182 .....	86
			11	182 .....	86
			12	183 .....	88

<i>Reference</i>						
<i>Vol.</i>	<i>Date</i>	<i>Chap.</i>	<i>Sec.</i>	<i>Page</i>		<i>Page</i>
29	1896, May 28	252	13	183	.....	16
						74
						75
						85
						87
			14	183	.....	73
						83
			15	183	.....	72
			16	183	.....	69
						82
			17	183	.....	68
			18	183	.....	88
			19	184	.....	14
						23
						95
			23	185	.....	25
			24	186	.....	69
	June 10	400	—	380	.....	14
						98
	1897, Mar. 2	363	5	619	.....	122
	Mar. 3	389	—	687	.....	44
			11	689	.....	118
30	1898, Mar. 15	68	8	317	.....	94
	May 17	339	2	416	.....	19
						125
	June 24	495	1	487	.....	68
						82
			2	487	.....	68
	July 1	541	29	554	.....	48
			53	559	.....	25
			54	559	.....	94
	1899, Mar. 3	424	1	1113	.....	14
						98
	Mar. 3	425	12	1151	.....	122
			17	1153	.....	80
						125
			18	1153	.....	124
	Mar. 3	429	—	1253	.....	52
			457	1335	.....	23
			459	1336	.....	89
31	1900, Feb. 20	23	2	32	.....	122
	Apr. 12	191	36	85	.....	81
	Apr. 30	339	86	158	.....	81
						89
			95	159	.....	81
	May 25	553	—	187	.....	46
	June 5	715	—	267	.....	98
	June 6	786	3	322	.....	24
			4	322	.....	23

## 293

Reference					
Vol.	Date	Chap.	Sec.	Page	Page
31	1900, June 6	786	7	324	95
			8	324	81
			9	324	89
			10	325	89
					95
			12	326	95
			30	332	95
			31	332	89
					98
	June 6	791	1	639	88
					94
	1901, Feb. 6	217	2	760	125
	Feb. 25	478	—	809	15
	Mar. 2	800	—	877	20
	Mar. 2	814	—	956	14
					23
					95
32	Mar. 3	873	—	1450	97
	1902, Jan. 22	3	—	2	89
	Mar. 6	139	4	51	65
	June 13	1079	11	374	45
	June 17	1093	7	389	122
	June 21	1140	—	397	107
	June 28	1301	1	475	87
					94
	June 30	1325	—	506	65
	1903, Feb. 2	349	—	791	46
	Feb. 11	544	1	823	20
					38
	Feb. 14	552	7	828	119
			10	829	118
					119
	Feb. 19	708	1	847	122
			2	848	37
			3	848	125
	Mar. 2	976	—	943	46
	Mar. 3	1006	—	1062	36
33	1904, Mar. 18	716	1	135	57
	Apr. 27	1629	—	393	24
					124
	1905, Mar. 3	1483	1	1207	69
	Mar. 3	1496	—	1264	46
34	1906, Mar. 19	960	8	74	98
	Mar. 23	1130	5	85	122
	May 7	2083	15	174	52
	May 16	2465	—	196	123
	June 19	3433	2	299	122
	June 21	3508	5	386	122
	June 28	3573	—	546	23
	June 29	3591	1	584	37
					54



<i>Reference</i>					
<i>Vol.</i>	<i>Date</i>	<i>Chap.</i>	<i>Sec.</i>	<i>Page</i>	<i>Page</i>
34	1906, June 29	3591	2	587 .....	122
			5	590 .....	122
					125
			7	593 .....	123
	June 29	3592	—	596 .....	48
			15	601 .....	123
			23	603 .....	53
	June 29	3594	—	607 .....	45
			4	608 .....	124
	June 29	3628	—	632 .....	123
	June 30	3913	—	669 .....	46
	June 30	3914	—	754 .....	73
					94
					95
	June 30	3915	—	768 .....	46
					55
			5	769 .....	123
	June 30	3935	—	816 .....	19
					71
					75
	1907, Feb. 20	1134	—	808 .....	48
	Mar. 4	2907	—	1260 .....	46
	Mar. 4	2918	1	1360 .....	69
					85
	Mar. 4	2939	—	1415 .....	45
			3	1416 .....	123
35	1908, Apr. 13	143	1	60 .....	37
					54
	Apr. 28	151	4	69 .....	119
	May 22	186	1	218 .....	57
	May 27	200	1	328 .....	16
					51
					208
				374 .....	15
					98
				375 .....	73
					74
					75
				380 .....	98
	May 27	205	3	406 .....	42
	May 28	211	3	424 .....	123
	May 30	225	3	476 .....	123
	Feb. 6	80	8	601 .....	52
	Feb. 9	100	—	614 .....	209
	Feb. 16	131	12	622 .....	124
	Feb. 19	161	—	640 .....	86
	Feb. 25	193	—	649 .....	123
	Mar. 3	269	1	838 .....	81
					89

## TABLE OF CITATIONS

295

<i>Reference</i>					
<i>Vol.</i>	<i>Date</i>	<i>Chap.</i>	<i>Sec.</i>	<i>Page</i>	<i>Page</i>
35	1908, Mar. 3	269	2	839 .....	23
			3	— .....	95
			4	— .....	81
			5	— .....	95
			6	— .....	88
	Mar. 4	320	50	1085 .....	65
	Criminal (or Penal) Code				
	1908, Mar. 4	321	1-18	1088 .....	49
			9-18	1089 .....	45
					53
			19-26	1092 .....	52
			29	1094 .....	54
			32-33	1095 .....	52
			35	1095 .....	54
			37	1096 .....	51
			42	1097 .....	54
			47-48	1097 .....	54
			84	1104 .....	46
			85-124	1104 .....	53
			109	1107 .....	3
					78
			135-37	1113 .....	52
			140	1114 .....	52
			178-231	1122 .....	48
			179-204	1123 .....	54
			215	1130 .....	54
			237	1136 .....	54
			245	1138 .....	53
			246-71	1138 .....	53
			272-310	1142 .....	48
36			327	1151 .....	52
					120
	1909, July 2	2	4	2 .....	65
			28(12-17)	98 .....	42
			28(29)	105 .....	21
	Aug. 5	6	28(30)	108 .....	16
					41
	1910, Mar. 23	109	—	241 .....	65
	Apr. 9	152	—	294 .....	66
					78
	Apr. 14	160	—	298 .....	46
	Apr. 15	164	—	300 .....	15
	Apr. 26	191	—	331 .....	46
			5	332 .....	123
	May 27	258	8	448 .....	81
	June 9	268	8	463 .....	119
	June 17	297	4	531 .....	28
	June 18	309	1	539 .....	50
			5	543 .....	50

<i>Reference</i>					
<i>Vol.</i>	<i>Date</i>	<i>Chap.</i>	<i>Sec.</i>	<i>Page</i>	<i>Page</i>
36	1910, June 18	309	7	544 .....	37
			13	554 .....	122
					125
			14	555 .....	123
	June 23	360	—	595 .....	122
	June 25	385	1	799 .....	50
	June 25	387	—	819 .....	109
			7	820 .....	84
			8	820 .....	109
	June 25	392	—	822 .....	54
	June 25	395	—	825 .....	54
	June 25	406	2	834 .....	122
	June 25	422	11	851 .....	124
	June 25	428	—	854 .....	20
					38
	June 25	431	—	855 .....	52
			5	857 .....	48
1911, Feb. 17	103	—	—	913 .....	46
Mar. 1	186	8	—	962 .....	20
Judicial Code					
Mar. 3	231		3	1087 .....	90
			4	1087 .....	91
			102	1122 .....	95
			123	1132 .....	82
			124	1132 .....	90
			125	1132 .....	91
			127	1133 .....	23
					85
			143	1136 .....	66
			145	1136 .....	39
			148	1137 .....	39
			151	1138 .....	39
			183	1142 .....	26
			185	1142 .....	122
			188	1143 .....	42
			189	1143 .....	42
			190	1144 .....	88
			191	1144 .....	95
			193	1144 .....	88
			194	1145 .....	42
			195	1145 .....	21
				1145 .....	42
			219	1152 .....	90
			220	1152 .....	93
			221	1153 .....	91
			224	1153 .....	82
					85
			280	1165 .....	26
Mar. 4	241	2	—	1339 .....	48
Mar. 4	269	—	—	1355 .....	86

## TABLE OF CITATIONS

297

Reference						
Vol.	Date	Chap.	Sec.	Page	Page	
37	1912,	Apr. 30	102	4	107	55
		June 19	174	—	137	45
		June 26	182	1	171	15
		July 22	249	3	198	55
				4	198	55
		July 31	263	—	240	54
		Aug. 9	278	3	266	123
		Aug. 20	308	—	315	46
				10	318	124
		Aug. 24	387	3	512	52
		Aug. 24	390	8	565	81
			9	565	173	
			11	566	88	
					37	
					122	
	1913,	Jan. 23	9	—	650	109
		Feb. 12	40	—	667	37
		Feb. 13	50	1	670	48
						54
		Mar. 1	92	—	701	48
						54
		Mar. 3	106	—	726	45
		Mar. 4	141	1	736	119
				7	738	57
		Mar. 4	145	—	853	46
1913,		Oct. 22	32	—	208	86
					209	155
					219	50
						122
					125	
	Dec. 23	6	—	251	44	
					54	
	1914,	Jan. 17	9	—	275	209
		Jan. 17	10	—	277	209
		July 16	141	1	497	57
				3	497	57
Aug. 1		223	1	627	37	
			1	653	69	
					70	
					85	
Aug. 22		267	—	703	21	
					42	
Sept. 2		293	—	711	45	
				54		
Sept. 26	311	—	717	37		
		9	722	123		
		10	723	125		
	Oct. 15	323	—	730	36	
	Oct. 20	330	6	743	123	
	Dec. 17	1	—	785	209	

<i>Reference</i>						
<i>Vol.</i>	<i>Date</i>	<i>Chap.</i>	<i>Sec.</i>	<i>Page</i>		<i>Page</i>
38	1915, Jan. 11	7	—	791	.....	39
	Mar. 4	169	—	1192	.....	46
	Mar. 4	176	1	1196	.....	37
						123
39	1916, May 4	109	1	61	.....	123
	May 15	120	—	121	.....	36
	June 3	134	125	216	.....	54
	July 17	245	30	382	.....	128
	Aug. 7	274	2	437	.....	55
			3	437	.....	55
	Aug. 9	301	—	441	.....	37
						123
	Aug. 11	313	15	481	.....	123
		368	—	521	.....	46
		396	6	531	.....	123
		417	—	604	.....	37
		418	—	645	.....	37
			1	649	.....	54
			2	649	.....	54
			3	654	.....	124
		426	5	674	.....	123
		433	—	711	.....	97
	Sept. 3	436	—	721	.....	37
	Sept. 7	451	—	728	.....	44
			29	737	.....	122
	Sept. 7	458	—	742	.....	45
						169
			26	747	.....	117
	Sept. 8	463	706	797	.....	123
	1917, Feb. 5	29	—	874	.....	48
			25	893	.....	65
						120
						124
			35	896	.....	118
	Feb. 17	84	—	922	.....	37
	Mar. 2	145	45	966	.....	81
	Mar. 3	162	5	1069	.....	48
	Mar. 3	163	1	1106	.....	3
	Mar. 3	165	14	1128	.....	124
	Mar. 4	179	—	1165	.....	46
40	1917, May 7	11	—	39	.....	45
						53
	May 18	15	—	76	.....	49
	May 29	23	—	101	.....	37
	June 15	30	—	217	.....	49
			Tit. 3	221	.....	48
						52
			Tit. 5	221	.....	45
						53
			Tit. 9	227	.....	49
						53

## TABLE OF CITATIONS

299

Reference					
Vol.	Date	Chap.	Sec.	Page	Page
40	1917, Aug. 8	49	I	253 .....	123
			4	262 .....	123
			7	267 .....	45
			9	267 .....	123
	Aug. 9	50	—	272 .....	37
	Aug. 10	51	—	272 .....	37
	Aug. 10	52	—	273 .....	37
	Aug. 10	53	7	278 .....	123
	Oct. 2	62	5	299 .....	123
	Oct. 3	63	1110	329 .....	48
	Oct. 6	83	—	385 .....	49
	Oct. 6	105	2(313)	408 .....	63
					117
	Oct. 6	106	—	411 .....	45
			19	425 .....	49
1918, Apr. 5	45	Tit. 1	506 .....	44	
		Tit. 2	512 .....	44	
	Apr. 10	50	—	516 .....	37
			5	518 .....	125
	May 16	75	2	554 .....	48
	May 20	78	—	556 .....	155
	June 7	93	4	602 .....	119
	July 1	113	I	683 .....	34
					93
	July 3	128	—	755 .....	46
	July 9	142	10	891 .....	54
	July 10	144	—	896 .....	102
			6	897 .....	25
	July 16	154	—	904 .....	37
	Oct. 16	186	—	1012 .....	48
	Oct. 16	187	—	1013 .....	52
	Oct. 29	197	—	1017 .....	37
	Nov. 21	212	—	1046 .....	210
1919, Feb. 24	18	1006	1130 .....	200	
		1407	1151 .....	48	
	Feb. 26	49	—	1182 .....	13
			2	1182 .....	91
			3	1182 .....	92
			4	1182 .....	91
					92
			5	1182 .....	92
			6	1182 .....	85
					91
			7	1182 .....	85
					91
			8	1183 .....	93
	Mar. 3	97	21	1299 .....	55
			22	1299 .....	55
			23	1299 .....	55
			24	1299 .....	55

<i>Reference</i>					
<i>Vol.</i>	<i>Date</i>	<i>Chap.</i>	<i>Sec.</i>	<i>Page</i>	<i>Page</i>
41	1919, July 11	7	11	104 .....	45
	July 19	24	1	209 .....	69
	Oct. 28	85	—	305 .....	210
		Tit. 1 § 2		306 .....	125
		Tit. 2 § 2		308 .....	125
	Oct. 29	89	—	324 .....	48
					54
	Dec. 24	17	—	377 .....	45
	1920, Mar. 9	95	—	525 .....	44
			9	527 .....	118
			12	528 .....	26
					118
	May 22	195	—	614 .....	30
	May 25	196	—	620 .....	48
	May 26	206	—	626 .....	36
	May 29	214	1	654 .....	65
					210
	May 31	217	—	716 .....	119
	June 5	234	1	865 .....	15
	June 5	235	1	923 .....	91
	Mar. 4	161	1	1412 .....	90
					91
42	1921, June 10	18	304	24 .....	116
					158
					172
	Aug. 15	64	305	24 .....	158
			—	159 .....	37
			404	168 .....	122
	Nov. 23	136	253	268 .....	55
	1922, Feb. 18	57	—	388 .....	37
				388 .....	125
	Apr. 26	146	—	500 .....	92
	May 11	186	3	540 .....	48
	May 26	202	—	596 .....	209
	June 1	204	—	611 .....	58
				613 .....	50
				616 .....	91
					92
	June 13	219	—	650 .....	45
	July 1	259	—	788 .....	58
	Sept. 14	306	2	838 .....	179
	Sept. 21	356	—	858 .....	41
					42
		318(f)		947 .....	123
		502		967 .....	148
		502(b)		967 .....	145
		516		970 .....	41

## TABLE OF CITATIONS

301

Vol.	Date	Reference			Page
		Chap.	Sec.	Page	
42	1922, Sept. 21	516	604	984 .....	124
			610	985 .....	124
			616	987 .....	64
					117
			617	987 .....	63
	1923, Jan. 3	21	Tit. 1	1068 .....	116
					59
			Tit. 2	1078 .....	58
					59
					91
					59
					58
					83
					58
					58
					15
					58
					13
					68
					81
					82
					89
43	1924, Feb. 11	17	—	6 .....	100
					60
					100
					170
					15
					98
					107
					109
					109
					128
	June 7	320	9	610 .....	17
					47
					92
					15
	1925, Jan. 7	32	—	724 .....	98
					107
					109
					109
					202
					44
					118
					26
					118
					109
44	1926, Feb. 26	27	1201	126 .....	58
					117
					15
					15



<i>Reference</i>					
<i>Vol.</i>	<i>Date</i>	<i>Chap.</i>	<i>Sec.</i>	<i>Page</i>	<i>Page</i>
44	1926, Apr. 29	195	Tit. 2	341 .....	23
					34
					41
					89
				346 .....	70
	May 25	380	—	630 .....	13
	May 28	411	—	669 .....	41
					148
	June 3	457	—	688 .....	73
	July 3	795	—	901 .....	109

## (G) STATUTES BY THEIR POPULAR NAMES

Adamson Law	37
Act of September 3 and 5, 1916, c. 436, 39 Stat. L., 721	
Animal Quarantine Acts	46
Act of May 29, 1884, c. 60, 23 Stat. L., 31	
Act of Feb. 2, 1903, c. 349, 32 Stat. L., 791	
Act of March 3, 1905, c. 1496, 33 Stat. L., 1264	
Anti-Narcotic Act	209
Act of December 17, 1914, c. 1, 38 Stat. L., 785	216
Bankruptcy Act	48
Act of July 1, 1898, c. 541, 30 Stat. L., 554	54
Capper-Volstead Act	37
Act of February 18, 1922, c. 57, 42 Stat. L., 388	
Census Laws	55
Act of April 30, 1912, c. 102, 37 Stat. L., 107	
Act of July 22, 1912, c. 249, 37 Stat. L., 198	
Act of August 7, 1916, c. 274, 39 Stat. L., 437	
Act of March 3, 1919, c. 97, 40 Stat. L., 1299	
Clayton Anti-Trust Act	36
Act of October 15, 1914, c. 323, 18 Stat. L., 730	
Corrupt Practices Act	54
Act of June 25, 1910, c. 392, 36 Stat. L., 822	
Criminal Code	
Act of March 4, 1909, c. 32, 35 Stat. L., 1088	
See Table of Statutes	
Dockery Act	163
Act of July 31, 1894, c. 174, 28 Stat. L., 208	171
	172
Espionage Act	49
Act of July 15, 1917, c. 30, 40 Stat. L., 217	
Explosive Act	49
Act of October 6, 1917, c. 83, 40 Stat. L., 385	
Federal Employees Compensation Act	63
Act of Septemeber 7, 1916, c. 458, 29 Stat. L., 747	
Federal Farm Loan Act	44
Act of July 17, 1916, c. 245, 39 Stat. L., 360	

# TABLE OF CITATIONS

303

	<i>Page</i>
Federal Reserve Act	44
Act of December 23, 1913, c. 6, 38 Stat. L., 251	
Federal Trade Commission Act	37
Act of September 26, 1914, c. 311, 38 Stat. L., 717	
Food and Drug Act	46
Act of June, 30, 1906, c. 3915, 34 Stat. L., 768	55
	74
Food and Fuel Control Act	37
Act of August 10, 1917, c. 52, 40 Stat. L., 273	
Fraudulent Bills of Lading Act	48
Act of February 13, 1893, c. 105, 27 Stat. L., 445	
Harrison Anti-Narcotic Act	209
Act of December 17, 1914, c. 1, 38 Stat. L., 785	216
Hours of Service Acts	45
Act of August 1, 1892, c. 352, 27 Stat. L., 340	
Act of March 4, 1907, c. 2939, 34 Stat. L., 1415	
Act of June 19, 1912, c. 174, 37 Stat. L., 137	
Act of March 3, 1913, c. 106, 37 Stat. L., 726	
Immigration Acts	48
Act of August 2, 1882, c. 374, 22 Stat. L., 186	
Act of February 20, 1907, c. 1134, 34 Stat. L., 898	
Act of February 5, 1917, c. 29, 39 Stat. L., 874	
Act of October 16, 1918, c. 186, 40 Stat. L., 1012	
Act of May 11, 1922, c. 187, 42 Stat. L., 540	
Income Tax Law	55
Act of November 23, 1921, c. 136, 42 Stat. L., 268	
Insecticide and Fungicide Act	46
Act of April 26, 1910, c. 191, 36 Stat. L., 331	
Interstate Commerce Acts	37
Act of February 4, 1887, c. 104, 24 Stat. L., 379	50
Act of March 2, 1889, c. 382, 25 Stat. L., 855	55
Act of February 10, 1891, c. 128, 26 Stat. L., 743	
Act of February 8, 1895, c. 61, 28 Stat. L., 643	
Act of February 19, 1903, c. 708, 32 Stat. L., 848	
Act of June 29, 1906, c. 3591, 34 Stat. L., 584	
Act of April 13, 1908, c. 143, 35 Stat. L., 60	
Act of June 18, 1910, c. 309, 36 Stat. L., 544	
Act of August 24, 1912, c. 390, 37 Stat. L., 566	
Act of March 1, 1913, c. 92, 37 Stat. L., 701	
Act of August 1, 1914, c. 223, 38 Stat. L., 627	
Act of March 4, 1915, c. 176, 38 Stat. L., 1196	
Act of August 9, 1916, c. 301, 39 Stat. L., 441	
Act of August 29, 1916, c. 417, 39 Stat. L., 604	
Act of February 17, 1917, c. 84, 39 Stat. L., 922	
Act of May 29, 1917, c. 23, 40 Stat. L., 101	
Act of August 9, 1917, c. 50, 40 Stat. L., 272	
Act of August 10, 1917, c. 51, 40 Stat. L., 272	
Judicial Code	
Act of March 3, 1911, c. 231, 36 Stat. L., 1087	
See Table of Statutes	

	<i>Page</i>
Lacey Act	46
Act of May 25, 1900, c. 553, 31 Stat. L., 187	
Locomotive Boiler Inspection Acts	46
Act of February 17, 1911, c. 103, 36 Stat. L., 315	
Act of March 4, 1915, c. 169, 38 Stat. L., 1192	
Mann Act	54
Act of June 25, 1910, c. 395, 36 Stat. L., 825	
Meat Inspection Acts	46
Act of August 30, 1890, c. 839, 26 Stat. L., 414	
Act of June 30, 1906, c. 3913, 34 Stat. L., 669	
Act of March 4, 1907, c. 2907, 34 Stat. L., 1256	
Migratory Bird Treaty Act	46
Act of July 3, 1918, c. 128, 40 Stat. L., 755	
Motor Vehicles Theft Act	48
Act of October 29, 1919, c. 89, 41 Stat. L., 324	54
Narcotic Drugs Import and Export Act	209
Act of February 9, 1909, c. 100, 35 Stat. L., 614	216
National Banking Acts	44
Act of June 3, 1864, c. 106, 13 Stat. L., 99	48
Act of July 12, 1882, c. 290, 22 Stat. L., 162	54
	62
	78
National Defense Act	54
Act of August 29, 1916, c. 418, 39 Stat. L., 649	
National Prohibition Act	43
Act of October 27, 1919, c. 85, 41 Stat. L., 305	210
Naturalization Acts	48
Act of July 14, 1870, c. 254, 16 Stat. L., 254	
Act of June 29, 1906, c. 3592, 34 Stat. L., 596	
Penal Code	
See Criminal Code	
Peonage Act	53
Criminal Code, secs. 246 to 271	
Pisgah Game Preserve Act	46
Act of August 21, 1916, c. 368, 39 Stat. L., 331	
Plant Quarantine Acts	46
Act of August 20, 1912, c. 308, 37 Stat. L., 315	
Act of March 4, 1913, c. 145, 37 Stat. L., 853	
Act of March 4, 1917, c. 179, 39 Stat. L., 1165	
Postal Laws	48
Criminal Code, secs. 179 to 231	54
Act of March 4, 1911, c. 241, 36 Stat. L., 1339	63
Act of March 3, 1917, c. 162, 39 Stat. L., 1069	
Act of June 15, 1917, c. 63, 40 Stat. L., 329	
Act of May 16, 1918, c. 75, 40 Stat. L., 554	
Act of February 23, 1919, c. 18, 40 Stat. L., 1151	
Act of May 25, 1920, c. 196, 41 Stat. L., 620	
Pure Food Act	46
Act of June 30, 1906, c. 3915, 34 Stat. L., 298	55
	74
Railroad Control Act	37
Act of August 29, 1916, c. 418, 39 Stat. L., 645	

# TABLE OF CITATIONS

305

	<i>Page</i>
Safety Appliance Acts	46
Act of March 2, 1893, c. 196, 27 Stat. L., 531	
Act of March 2, 1903, c. 976, 32 Stat. L., 943	
Act of April 14, 1910, c. 160, 36 Stat. L., 298	
Selective Service Act	49
Act of May 18, 1917, c. 15, 40 Stat. L., 76	
Sherman Anti-Trust Act	36
Act of July 2, 1890, c. 647, 26 Stat. L., 209	54
Shipping Acts	44
Act of June 26, 1884, c. 121, 23 Stat. L., 53	
Act of June 19, 1886, c. 421, 24 Stat. L., 79	
Act of March 3, 1897, c. 389, 29 Stat. L., 687	
Act of September 7, 1916, c. 451, 39 Stat. L., 728	
Act of June 7, 1872, c. 322, 17 Stat. L., 262	
Act of June 9, 1874, c. 260, 18 Stat. L., 64	
Stockyards Act	37
Act of August 15, 1921, c. 64, 42 Stat. L., 159	
Tariff Act of 1922	41
Act of September 21, 1922, c. 356, 42 Stat. L., 858	145
Telegraph and Telephone Control Acts	37
Act of July 16, 1918, c. 154, 40 Stat. L., 904	
Act of October 29, 1918, c. 197, 40 Stat. L., 1017	
Trading with the Enemy Act	45
Act of October 6, 1917, c. 106, 40 Stat. L., 411	49
Twenty Eight Hour Act	45
Act of June 29, 1906, c. 3594, 34 Stat. L., 607	
Volstead Act	43
Act of October 27, 1919, c. 85, 41 Stat. L., 305	210
War Finance Corporation Act	44
Act of April 5, 1918, c. 45, 40 Stat. L., 506	
War Risk Insurance Act	45
Act of September 2, 1914, c. 293, 38 Stat. L., 711	48
	54
Webb Export Trade Act	37
Act of April 10, 1918, c. 50, 40 Stat. L., 516	
White Slave Act	54
Act of June 25, 1910, c. 395, 36 Stat. L., 825	
Wilson Tariff Act	37
Act of August 27, 1894, c. 349, 29 Stat. L., 570	



## INDEX

- Accounts, Auditing Division of, 30; clerks of court, 93-94; District Attorney's, 74-75; field examination of, 32; local audit of, recommended for, district attorneys, clerks of court, and marshals, 16; marshal's 87-88. See also *Division of Accounts*.
- Accounts, (District Attorney's) once sent to Interior Department, 12.
- Administrative Division, 27-34.
- Admiralty Division, 44-46, 50, 63, 79.
- Agent of the Treasury, 5.
- Agriculture Department. See *Department of Agriculture*.
- Alaska, Bureau of Investigation in, 52, 53, 55; clerks of court, in, 95; courts in, 23; criminal prosecutions in, 58; detecting crime in, 52, 53, 55; District Attorneys in, 81; fur cases in, 119; jails in, 98; judicial officers in, 23; laws relating to duties of officers in, 24; marshals in, 88-89; road and tire laws for, 24; seals in, 24.
- Alderson, West Virginia, National Industrial Institution for Women at, 15, 104-105.
- Aldrich, Charles H., opinion of, on authority of opinions of the Attorney General, 153.
- American Bar Association, recommends judicial administrative bureau, 178-179.
- American Judicature Society, Journal of, 179.
- Anti-trust cases, trial of may be expedited by Attorney General, 20, 38.
- Anti-Trust Division, 36-39, 50; Bureau of Investigation in, 54.
- Appeals, Solicitor General in charge of, 36.
- Appointment Clerk, Office of, 29-30.
- Assistant Attorney General, Administrative Division in office of, 27; appointed by President and Senate, 7; Customs Division, Office of, established in, 16; history of office of, 7, 9; in Interior Department, 57; in Post Office Department, 57; special, 71; Technical Divisions, in office of, 35-36. See also *District Attorneys Assistants; Solicitor for Interior Department*.
- Assistant to Attorney General, in charge of Anti-Trust Division, 35, 36.
- Assistant to Solicitor General, office of, 35, 50.
- Attorney General, assistant to, authorized and abolished, 7. See also *Assistant Attorney General*. Auditor for the Post Office Department, duties transferred to, 9; bankruptcy statistics reported by, 25; chief law officer of, 19-21; chief of federal police, 24; claims against U. S., defended by, 20; clerks of court, bonds of, fixed by, 93; ——— commissions of, signed by, 22; ——— deputy and assistant, salaries of, fixed by, 91; ——— expenses of, authorized by, 92; ——— orders for removal of, signed by, 22; ——— salaries of fixed by, 91; commissioners of court, commissions of, signed by, 22; ——— removal of, by, 14; (See also *Commissioners of Court*) commissions signed by, 22; compromise suits conducted by, 120-121; Comptroller General, represented in court by, 173-75; Comptroller general's duties, opinion of, on, 171-72; congressional committees, testimony of, before, 20; counsel for government, all to be employed by, 12; courts, affairs of, administered by,

21, 178; (See also *Courts and Judges*) customs cases, appeal of, on certificates of, 21, 42; district attorney's assistants, employed by, 8, 10, 64, 71; ——— necessity for employment of special, must be certified by, 70; ——— residence of regular, fixed by, 69; district attorneys, commissions of, signed by, 22; ——— residence of, fixed by, 72; ——— salaries of, fixed by, 68; (See also *District Attorneys*) enforcement clauses of statutes by, 121-125; ex-officio member of board for trial of suspended land entries, 25; ——— of board to decide when a tonnage duty contravenes a treaty, 25; ——— of corporation of Smithsonian Institution, 25, 129; ——— of President's cabinet, 2; ——— of Pueblo lands board, 47; jails, contracts made for use of state, by, 24; judges' commissions signed by, 22; judicial officers, commissions of, signed by, 22; law clerk for, 8; library; (See *Library*), litigation concerning accounting cases, conducted by, 173-175; ——— admiralty, reported by, 26; ——— cases, expedited by, 20, 21; ——— concerning civil and criminal law, conducted by, 2; ——— claims, conducted by, 8, 20; ——— concerning compromises, conducted by, 120-21; ——— controlled by, 111-125, 172-73; ——— concerning criminal cases, conducted by, 2; ——— concerning customs cases, appeal from, on certificate of, 21, 42; ——— discretion toward, exercised by, 21, 114-15, 172-75; ——— in inferior courts, Randolph recommended appearance of, in, 2; marshals, penalty bonds of, fixed by, 83, 89; ——— commissions of, signed by, 22; ——— residence of, fixed by, 88; ——— salaries of, fixed by, 82, (See also *Marshals*) opinions of, (See *Opinions of the Attorney*

*General*) pardons by, (See *Pardons Division*) paroles approved by, 108; political advice of, 18; President and Department heads, advised by, 2, 19; prisons, appointment of officers and employees of, by, 99, 101, 103, 104, 106; ——— erection of, recommended by, 14; ——— products, prices of, fixed by, 101, 102; ——— to which prisoners are to be sent, designated by, 97; (See also *Prisons*) prisoners, commutations for good conduct of, defined and restored by, 107; ——— prisons for, designated by, 97; ——— incarceration of, controlled by, 14; ——— instruction of, provided for, by, 104, 105; ——— transfer of, provided for, by, 104, 105; (See also *Prisoners*) private practice allowed to, 2, 3; probation officer may require reports from, 110; quarters of, supplied, reports of, 25-26, 97-118; salary of, 2, 3; testimony of, before Congressional Committee, 20, 65.

Attorney general, Acting, no other department head may be, 148.

Attorney general's office, establishment of, 2; organization of, 6.

Attorney General, England, 1. Atlanta, Georgia, Prison. See *Prisons*.

Auditor for the Post Office Department, relation of, to postal legal matters, 9, 61.

Bankruptcy cases, examination of accounts by field examiners in, 33; statistics of, 25, 32, 94.

Bar Association of America, recommended judicial administrative bureau, 178-179.

Black, Jeremiah, S., on authority of opinions of Attorney General, 153.

Board of Public Welfare, District of Columbia, National Training School for Girls transferred to, 15.

Bonaparte, Charles J., 132.

Bonds, examination of, by Administrative Division, 34; ——— by

- solicitor of the Treasury, 65; temporary marshals must execute, 82. See also *Surety Companies*.
- Bonds for bail, district attorneys must watch sureties on, 77.
- Bonds of Clerk of court, 92, 93, 95.
- Bonds of marshals, 83; in Alaska, 89.
- Brewster, Benjamin H., on authority of opinions of Attorney General, 153.
- Broom and brush factory, Leavenworth prison, 100, 193.
- Budgets, judicial salaries under separate heads in, 180.
- Building for Department of Justice, 13.
- Bureau of Internal Revenue, agents of, 217; general counsel for, 58, 190-91; laboratories of, 212-13.
- Bureau of Investigation, 51-56; Criminal Identification Division of, established, 16; establishment of, 15, 16; general duties of, 24; pardon investigations of, 97, 197-198; parole investigations by, 197-98; postal cases of, 205-07; protection of President by, 209; relation of, to other detective services, 200, 217-19.
- Bureau of Pensions, certifications to, 30.
- Bureau of the Budget, 31.
- Butler, Benjamin F., an authority of opinions of the Attorney General, 151.
- Cabinet, Attorney General, member of, 2; members of, also ex-officio members of Smithsonian Institution, 25.
- Canal Zone, Auditor may not withhold salary of judge of, 156, 173.
- Chief Clerk, Office of, 27-29.
- Chillicothe, Ohio, Industrial Reformatory for men at. See *Industrial Reformatory for Men*.
- Circuit Court of Appeals, cases conducted by district attorneys in, 76; clerks of, 91, 92, 94; salaries of district attorneys include services before, 68; senior judges of, members of judicial conference, 179; service of, by district marshal, 82. See also *Courts*; *District courts*.
- Civil Service, District Attorneys' clerks under, 72; Marshals' deputies under, 86; Narcotic agents under, 212; Prohibition Unit under, 215, 219.
- Civil Service Commission, 134; appointment clerk corresponds with, 29; employee's compensation cases, compromised by, 117; opinions of Attorney General to, 127.
- Claims against the United States, Attorney General in charge of, 20; Claims Division defends, 39-41; District Attorneys may not prosecute, 78.
- Claims Division, 39-41.
- Clerks for the Attorney General, 4, 8.
- Clerks of Court, 90-96; accounts of; (See *Accounts*) in Alaska; (See *Alaska*) appointment of, by courts, 90; assistants to, authorized by attorney general, 90; relation of, to Attorney General, 22; bankruptcy statistics supplied by, 94; bonds of; (See *Bonds*) commissioners must have consent of attorney general to act as, 95; commissions of, 22; delinquencies of, 14; deputies for, authorized by Attorney General, 90; District Attorney's accounts transmitted by, 74; examination of, 32, 94; expenses of, authorized by Attorney General, 92; fees of, 13, 91; Judicial Administrative Bureau, supervision of, by, 179; printing for, 28; removal of, by courts, 90; — by President, 14, 22; reports of agent of the Treasury to, 5; — Division of Mails and Files come to, 27; — Solicitor of the Treasury, to, 65, 95; salaries of, 13, 91; statistics of bankruptcy supplied by, 94; supplies of 28; Supreme Court, paid by fees, 14.



- Commissioner of General Land Office, member of board for trial of suspended land entries, 25.
- Commissioner of Internal Revenue, compromises of cases by, 117; rules for district attorneys and marshals made by, 66, 79; Solicitor of, 9, 58.
- Commissioner of Patents, relation of Attorney General to, 128.
- Commissioners of Court Accounts. See *Accounts*.
- Commissioner of Courts, appointment of, by district courts, 23; Attorney General controls, 23; bonds of (See *Bonds*) clerks of court may not be appointed as, without consent of Attorney General, 95; commissions of, 22; District Attorneys must scrutinize accounts of, 77; fees of, 14; judicial administrative supervision by, 179; removal of, by Attorney General recommended, 14.
- Commissions of judges and judicial officers, 22.
- Communications Sections, 29.
- Compromise of claims, 63, 64, 115-121.
- Comptroller General, 30, 31; Attorney General's relations with, 156, 157-175; compromise of postal cases, by, 116; Marshals' reports to, 89; opinions of Attorney General not followed by, 154, 157; represented in court by Department of Justice, 173-175. See also *General Accounting Office*.
- Comptroller of the Treasury, 142; opinions of Attorney General for, 159-161; suits against delinquent officers, conducted by, 4.
- Congress, legal opinions of two officers, provided for, by, 158; opinions of Attorney General affecting, 147-150, 129, 134; relation of, to judicial organization, 178, 180; Supreme Court should control judicial organization of, 180; testimony for Committees of, taken under supervision of Attorney General, 20.
- Congressional Directory, material for, prepared by Appointment Clerk, 29.
- Cotton duck mill, Atlanta Prison. 102, 193.
- Court of Claims, appeals to Supreme Court from, 8-9; clerk of, 95; procedure of, 40-41; Solicitor for, 8; suits before, 19, 39-41.
- Court of Commissioners of Alabama Claims, Attorney General in charge of suits before, 20.
- Court of Customs Appeals, 42-43; appeal to Supreme Court from, 20, 42; clerk of, 95; marshal of, 88; procedure of, 42, 43.
- Courts, accounting cases before, 172-175; accounts; (See *Accounts*) administration of, by Department of Justice and Supreme Court, 21, 178, 180; Alaskan; (See *Alaska*) districts and divisions of, fixed by Supreme Court, 180; expenses of, paid by marshals, 23, 186; fund for miscellaneous expenses of, expended under authorization of Attorney General, 23; geographical judicial organization of, 185; judicial administrative bureau of, 177-180; judicial conference of, 179; judicial districts should not be increased, 188-189; libraries for, provided by Attorney General, 23; litigation control by Attorney General, recognized by, 113-14; mandamus by, 173-175, 75, 88; opinions of Attorney General, concerning, 155-56; printing for, in field authorized, 28; printing and binding for, provided by Attorney General, 23; quarters for, provided by marshals, 23, 85; supplies for, 28. See *District Courts*; *Circuit Courts of Appeals*; *Judges*.
- Criminal Division, 47-50.
- Criminal Identification Division, Bureau of Investigation, 55. See also *Bureau of Investigation*.
- Crittenden, John, J., 7; opinion of, on authority of opinions of Attorney General 152.

- Cushing, Caleb, 3, 7; opinion of, on authority of opinions of Attorney General, 152; — on duties of Attorney General, 137, 150; — on equality of states, 127; report of, on judiciary, 7.
- Customs cases, Appeal from, on certificate of Attorney General, 20, 42; compromise of, 117; conduct of, in Admiralty Division, 45; — in Customs Division, 41-43; decisions on, may not be changed by Secretary of Treasury, except with opinion of Attorney General, 145, 148.
- Customs Court, headquarters of, in New York, 41; procedure of, 42, 43; salaries of, 183.
- Customs Divisions, 41-43.
- Daugherty, H. M., opinion of, on duty of Comptroller General, 163-164; — on position of solicitors, 190.
- Delinquent officers, suits against, 61.
- Department of Agriculture, cases from, conducted by Admiralty Division, 46; experts in cases under pure food acts furnished by, 74; prisons farms, partially managed by, 102, solicitor of, 58.
- Department of Commerce. See *Solicitor for the Department of Commerce*.
- Department of Labor. See *Solicitor for the Department of Labor*.
- Department of States. See *State Department*.
- Department of the Navy, Intelligence Division, 217.
- Department of the Treasury. See *Treasury Department*.
- Department of War, Intelligence division, 217.
- Detection of crime, 200-219.
- Disbursing Clerk, Office of, 30.
- Disbursements, by disbursing clerk, 30; by Marshals and Wardens, 99, 101, 103.
- Distress warrants, 5, 62, 84.
- District Attorneys, 68-81, 187; accounts of, sent to Interior Department, 12; (See also *Accounts*) agent of the Treasury, instructions to, by, 5; appeal cases, Attorney General may be represented by, in, 36; appointments of, 68; assistance to, from Solicitors, 60; assistants to, 8, 10, 25, 69-71; — regular, 69, 71, 72; — special, 25, 70-71; bonds; (See *Bonds*) claims suits against United States in district courts, conducted by, 39; clerical assistants to, 71-72; — Attorney general required to give list of, annually, 25; commissions of, 22; control of, by Attorney General and Solicitor of treasury 2, 8, 9, 12, 19, 66, 79, 113, 186, 189; dockets of, 76; duties of, 75-81; enforcement clauses of statutes by, 121-125; examination of, 32, 75; expenses of, 25, 72-73, 79; fees of, 13, 68; interference with, by other departments, 189; interpreters for, 173; list of, 29; litigation by, concerning appeals, 36; — — — — — claims, 39; — — — — — customs, 79; — — — — — internal revenue, 79; oath of, 68; Office of, 185; printing for, 28; reports to, 76, 79, 80; — to agent of the Treasury, 5; — from Division of mails and files, 27; — from Solicitor of the Treasury, 65, 78, 189; residence of, 72; rules for, made by Commissioner of Internal revenue, 66, 79-80, 189; — — by Solicitor of the Treasury, 66, 79, 189; salaries of, 13, 68, 69; stenographic services for, 73, supplies for, 28; testimony by, before Congressional committees, 20; clerks for, 90, 91, 92, 94; commissioners for, 23.
- District courts, District Attorney temporarily fills vacancy in, 68; mandamus by, to judicial officers, 75, 88; — — in accounting cases, 173-75; marshals temporarily fills vacancy in, 82; probation in, 109-10. See also *Courts; Judges*.

- District of Columbia, Clerk of Court in, 91; District Attorney for, 68, 69; Metropolitan Police in, 15; National Training School for Boys in, 15, 106; National Training School for Girls in, 15; public lands in, 46.
- Division of Accounts, 30-32, 188.
- Division of Examiners, 32-33. See also *Examiners*.
- Division of supplies, 28.
- Dockets, kept by Division of mails and files, 27.
- Drugs and Crime, 195-196.
- Employees compensation cases, compromises in, 117.
- Employees Compensation Commission, conflict of, with Comptroller General, 169-170, 170-172.
- England, has no law enforcement organization, 1.
- Enforcement clauses of statutes, 80, 121-125.
- Establishment of Department of Justice, 9.
- Examiner of Claims, 9. See also, *Solicitor for the Department of State*.
- Examiners, 32-33; for clerks of court, 94, 179; for District Attorneys, 75; for Marshals, 88; for probation officers, 110. See also *Division of Examiners*.
- Experts, compensation for, 23; employment of, 74.
- Fees of, clerks of court, 13, 91; of commissioners of court, 14; of District Attorneys, 13, 68; of jurors, 85, of marshals 13, 82; of witnesses, 85; of field establishment, 68-76, 185-189; of Bureau of Investigation, 55-56; examination of, 32.
- Fiscal Control Section, 31.
- Fuess, C. M., life of Caleb Cushing, by, 127, 150.
- Fur cases in Alaska, compromise in, 119.
- General Accounting Office, accounts of Marshals sent to, 87; copy of marshal's bond, sent to, 83. See also *Comptroller General*.
- General Agent, Office of, 30-33.
- General counsel for Bureau of Internal Revenue, 58, 190-191.
- General Intelligence Division, Bureau of Investigation, 52-54.
- General Land Office, Solicitor for, 8.
- General Supply Committee, cooperation with, 28.
- Gilpin, H. D., opinion of, 6.
- Good conduct commutations, 107.
- Government Printing Office causes delay to Department of Justice, 194; suits on bonds of, conducted by Solicitor of Treasury, 62.
- Grand jury, appearance before, 71, 78.
- Gregory, Thomas Watt, quoted on authority of opinions of Attorney General, 154; quoted on duty of Comptroller of Treasury, 162.
- Griggs, John, W., opinion of, on litigation, 113.
- Hawaii, clerks of court in, 91, 92; criminal prosecutions in, 48; District Attorney for, 81; marshal for, 89.
- Hearings, Congressional, on Department of Justice, 31.
- Hospital for Insane, (District of Columbia), prisoners may be sent to, 98.
- Immigration cases, compromise, 118.
- Independent establishments, opinions for, 127.
- Industrial Institution for Women. See *National Industrial Institution for Women*.
- Inspectors of Prisons, 99.
- Institution for Women. See *National Industrial Institution for Women*.
- Industrial Reformatory for Men, 15, 105-106.
- Interior Department, accounts of District Attorneys for, 12; assistant Attorney General for, 57; Solicitor of. See *Solicitor for the Interior Department*.

- Internal Revenue, Solicitor of, 9.  
 Internal revenue cases, compromises in, 117.  
 Interpreters, authorization for use of, 73.  
 Interstate Commerce Commission, cases of, conducted by Admiralty Division, 46; investigations for, by Bureau of Investigation, 53; suits to restrain orders defended by Assistant to Solicitor General, 50.  
 Jails, 98, 198-199; contracts for use of State, 24; provided by Marshals, 84. See also *Alaska*.  
 Jenckes, Congressman, introduces bill to establish Department of Justice, 10-12; quoted on authority of opinions of Attorney General, 148-149.  
 Johnson, Reverdy, quoted on authority of opinions of Attorney General, 151.  
 Joint Committee on Reorganization, recommendation of, in regard to opinions of Attorney General, 149.  
 Judges, Alaska; (See *Alaska*) clerical assistance to district attorneys must be certified by, 71; commissions of, 22; list of, 29; messengers for, 23; nomination of, prepared by, appointment clerk, 29; salaries of, 23, 30, 180, 186; stenographers for, 23; supplies for 28. See also *Courts*.  
 Judges, (District), must verify accounts of District Attorneys, 74.  
 Judicial Administrative Bureau, 177-180.  
 Judicial districts, inadvisability of, increasing number of, 188-189.  
 Judicial officers, Alaska; (See *Alaska*) instruction of, 133; nominations for, 29.  
 Lawrence, Congressman, introduces bill to establish Department of Justice, 10; quoted on opinions of Attorney General, 149.  
 Leavenworth, Kansas Prison. See *Prisons*.  
 Legal services, officers of Department of Justice to render all, required by government, 21.  
 Letters rogatory, 141.  
 Library, 6, 33-34.  
 Library of Congress, investigation for, by Bureau of Investigations, 53.  
 Litigation to which United States is a party, 21, 111-125. See also *Attorney General*; *Litigation*.  
 McNeil Island, Washington, Prison. See *Prisons*.  
 Madison, James, message of, concerning Attorney General, 3.  
 Mails and Files, Division of, 27-28; Bureau of Investigation of, 52.  
 Mandamus, Writ of, concerning accounting cases, 173-175; ——— District Attorneys, 75; ——— marshals, 88.  
 Marshals, 82-89, 187, 189; accounts of; (See *Accounts*) appointed by President and Senate, 22, 82; book-keeping for, 16; clerical assistants to, Attorney general required to give list of, annually, 25; Bonds of; (See *Bonds*) commissions of, 22; control of, by Attorney General, 22, 84, 186, 189; courts, quarters for, provided by, 23; deputy, 86-87; ——— Attorney General required to give list of, annually, 25; direction for, from Attorney General, only, 80, 189; disbursing officers, 85, 185; distress warrants executed by, 5, 84; duties of, 83, 23, 24, 85, 89; examination of, 32, 88; expenses of, 85; fees of, 13, 82, 86; interference writ by other departments, 189; judicial salaries paid by, 23; jurisdiction of, 83; list of, 29; maintenance of order by, 24; Office of, 185; printing for, 28; reports of, to Solicitor general, 84, 89; ——— to Attorney General 24; ——— agent of the Treasury, 5; ——— to Comptroller general, 89; ——— to Division of Mails and Files; ——— to Solicitor of the Treasury, 65;

- residence of, 88; rules for, 66; salaries of, 13, 22, 82; supplies for, 28.
- Master in Chancery, 23.
- Moody, William H., quoted on authority of opinions of United States, 154.
- Moore, John Bassett, as law clerk in office of Solicitor for State Department, 67.
- Narcotic Division, 209, 211, 212.
- National Industrial Institution for Women, 15, 104-105.
- National Training School for Boys, 15, 106-107, 192; accounts of, 30.
- National Training School for Girls, 15, 192.
- Naval Judge Advocate General, 9.
- Naval officers, transportation allowance to, 166-167.
- Naval Reserve, 165-166.
- Navigation cases, compromise, 118.
- Navy Department, Intelligence Division of, 217.
- Nominations prepared by appointment Clerk, 29.
- Official Register of the United States, material for, prepared by Appointment Clerk, 29.
- Olney, Richard, quoted, on accounting matters, 171; — on authority of opinions of Attorney General, 154.
- Opinions, legal, confusion in, 11; Solicitor, 60.
- Opinions of the Attorney General, 26, 126-146; accounting matters, 157-175; authority of, 19, 147-156; constitutional questions, 26; judicial questions, 138; printed, 6, 7; rules governing, in accounting matters, 159-161; Solicitors' relations to, 60, 128.
- Opium and Crime, 195-196.
- Organization of the Department of Justice, 18, 35, 181-182, 186-189.
- Palmer, A. Mitchell, "Red" prosecutions by, 115.
- Panama Canal Zone, District Attorneys in, 81.
- Pardon Division, 19, 26, 97, 183.
- Pardons, 19, 97, 197-198.
- Paroles, 108-109, 197.
- Parole office, authorized, 108.
- Patent Office, opinion of, explaining letters rogatory, 141.
- Pinkney, William, 3.
- Penitentiaries. See *Prisons; Prisoners*.
- Police of District of Columbia under control of Attorney general, 15.
- Porto Rico, Clerks of Court, in, 91; criminal prosecutions in, 48; District Attorneys, 81; rifle range in, 160.
- Postal cases, compromise in, 116.
- Postal crimes, investigation of, 205-207.
- Postmaster General, compromise of postal cases by, 116; nomination of inspectors by, 203; opinion of Attorney General refused by, 136, 139, 141.
- Post Office Department, Assistant Attorney General for, 57; District Attorneys, denied control over, 80; mail sacks made for, at Atlanta Prison, 102; marshals' reports for money due, 87, 89; inspectors for; (See *Post Office Inspectors*); Solicitor of, 57, 58; suits for money due, 9, 61.
- Post Office Inspectors, 200-208, 217-219; activities of, 204-208; history of, 200-201; organization of, 201-204.
- President, appointment of, Boards of Advisors for reformatories by, 104, 106; — District Attorneys, 68, 81; — marshals, 82, 88; — Pueblo lands Board, 47; — Solicitors, 59; — trustees of National Training School for Boys, 106; Attorney General's relation to, 2, 18, 126-27; clerks of court, may be removed by, 14, 22; litigation of United States, controlled by, 112, 113; pardons by, 97; poor debtors may be discharged by, 119; protection

- of, by Bureau of Investigation, 51, 209; protection of, by Secret Service, 209; removal of Clerks of Courts by, 14, 22.
- Printing, 28, 183; at prisons, 194.
- Prisoners, 97-110, 192-199; commutations of sentence for good conduct of, 24, 107; discharge, allowances of, 109; incarceration of, 14, 24; good conduct of, rules for commutation for, made by Attorney General, 24, 107; insane, 98-99; McNeil Island, shoes for, made at Leavenworth, 100; marshals in charge of, 84-85; paroles of, 24, 108-109; prison for, designated by Attorney General, 24; probation of, 109-110; Secretary of Interior once in charge of incarceration of, 14; short-time, placed in state jails, 98; transfer of, to and from reformatories, 104-105. See also *Superintendent of Prisons*.
- Prisons, 97-109, 192-199; accounts of, audited, 30; Atlanta, Georgia, 14, 25, 53, 101-103, 193; Attorney General designates, for prisoners, 24; Bureau of, proposed, 182-183; erection of, recommended, 14; housing in, 194-196; industrial reformatory for men; (See *Industrial Reformatory for Men*) Leavenworth, Kansas, 14, 99-101, 193; McNeil Island, Washington, 14, 103-104; National Industrial Institution for Women; (See *National Industrial Institution for Women*) National Training for Boys; (See *National Training School for Boys*) National Training School for Girls; (See *National Training School for Girls*) products of factories in, sold only to government departments, 101, 106; transfer of to another Department suggested, 196-198; (See also *Superintendent of Prisons*) Probation, 109-110; supervision of, by Department of Justice, 198; ——— by Judicial Administrative Bureau, 180.
- Process, execution of, by marshals, 83; for entire country, 15.
- Prohibition Act, litigation under, and Attorney General's discretion concerning, 114.
- Prohibition and Taxation, Division of, 43-44.
- Prohibition Unit, 209-219; activities of, 215-216; history of, 209-210; legal force of, 43; narcotic division of, 209, 211, 212; organization of, 211-215.
- Public buildings, salaries of district attorneys include services in connection with sites of, 68.
- Public funds, Comptroller of the Treasury to enforce accounting of, by suit, 4.
- Public lands, custody of, by Solicitor of the Treasury 64; title to, certified by Attorney General, 20, 65; ——— Solicitor of the Treasury, 65.
- Public Lands Division, 46-67.
- Pueblo Lands Board, 17, 47.
- Quarters, official, supplied to Attorney General, 4, 6.
- Randolph, Edward, 2.
- Real Property of the United States, title certified, by Attorney General, 20, 65; ——— by Solicitor of the Treasury, 65.
- Receivers, supervision of by Department of Justice, 32; ——— by Judicial Administrative Bureau, 179.
- Records of Department of Justice begun by William Wirt, 4.
- "Red" activities, 114-115.
- Referees, supervision of, by Department of Justice 32; ——— by Judicial Administrative Bureau, 179.
- Red Cross, improper use of emblem of, 53.
- Reformatory for Men. See *Industrial Reformatory for Men*.
- Reformatory for Women. See *National Industrial Institution for Women*.

- Register of Department of Justice, 29.
- Reorganization. See *Joint Committee on Reorganization*.
- Reports by the Attorney General, 25-26, 97, 118.
- Retrenchment, Joint Congressional Committee on, reported bill to establish Department of Justice, 10.
- Scott, James Brown, as Solicitor for State Department, 67.
- Scott, General Winfield, seized law books at Mexico City, 34.
- Secretary of Agriculture, compromises fur cases, 119.
- Secretary of Commerce, compromises fur cases, 119; ——— navigation cases, 118.
- Secretary of Labor, compromises immigration cases, 118; Solicitor of Department of Justice acted as, 67.
- Secretary of State may prescribe duties for Solicitor, 67; refused opinion of Attorney General, 139, 140.
- Secretary of Interior, 135, 136; disarmament cases reviewed by, 128; member of the board for trial of suspended land entries, 24; ——— Pueblo lands board, 47; opinions of Attorney General refused by, 133, 139, 143; prisons and prisoners transferred from control of, 14.
- Secretary of Navy, Comptroller General's conflict with, 170; District Attorneys must report prize cases to, 79; marshal's reports in prize cases, received by, 89; naval courts' martial law decisions reviewed by, 168-169; Naval Reserve, 165-166; opinions of Attorney General refused by, 139, 143; opinions of Attorney General for subordinates received by, 133; prize cases submitted to, 78, 89.
- Secretary of the Treasury, 160; bonds for chief clerk of court of claims approved by, 95; (See also *Surety Companies*) collectors of customs, rules approved by, 66; compromises made by, in claims cases, 116, 117, 119-120; ——— customs cases, 116; ——— internal revenue cases, 117; ——— navigation cases, 118; claims compromised by, 116, 117, 119-120; customs cases compromised by, 116; decision of, in customs cases cannot be charged, 145, 148; disbarment proceedings held before, 144; discharge for Poor Debtors by, 119; District Attorneys controlled by, 79; fines, penalties, and forfeitures remitted by, 63; fraud cases, Solicitor directed by, in, 61; internal revenue cases compromised by, 117; member of board to decide when a tonnage duty contravenes a treaty, 25; navigation cases formerly compromised by, 118; opinion of Attorney General refused by, 131, 135, 136, 140, 141, 142; prosecutions, supervised by, 131; surety companies supervised by, 65.
- Secret Service, 208-209, 217-219.
- Secretary of War, 160; Comptroller General in conflict with, 163-165; opinions of Attorney General for subordinates received by, 133; ——— referred to, 140, 141, 159; reports obstructions of navigation to Attorney General, 80.
- Service Section, 29.
- Seymour, Augustus T., 37.
- Shipping Board, Investigation Division of, 217.
- Ships of United States, compromises of suits concerning, 117.
- Shoe, Broom and Brush factory, Leavenworth Prison, 100, 193.
- Smithsonian Institution, Attorney General member of corporation of, 125, 129; opinions from Attorney General not received by, 129.
- Solicitor and Naval judge Advocate General, 9.
- Solicitor for Court Claims, 8, 9.

- Solicitor for Department of Agriculture, 58.
- Solicitor for the Department of Commerce, 57, 66.
- Solicitor for the Department of Labor, 57, 66, 67.
- Solicitor for Department of State, 57, 67; title of changed from "Examiner of claims," 79.
- Solicitor for the General Land Office, 8.
- Solicitor for the Interior Department, 57, 59, 67.
- Solicitor for the Post Office Department, 57, 58; for the War Department, 58.
- Solicitor General, 35-36; appeals made to, in criminals cases, 49, 50; as acting Attorney General, 36; assistant to, 35, 50; Chairman of Library Committee 33; Office of, created, 11.
- Solicitor of Internal Revenue, 9, 57, 58. See also *General Counsel for Bureau of Internal Revenue*.
- Solicitor of the Navy, 57.
- Solicitor of the War Department, 9, 58.
- Solicitor of the Treasury, 6, 43, 57, 59, 60-66, 190-191; agent of Treasury's duties transferred to, 5; clerks of court report to, 95; compromises claims and customs cases referred to, 116, 120; discharge of poor debtors, by, 119; District Attorney's relations to, 8, 12, 78-79; marshals supervised by, 84; Office of, established, 5, 10; subordination of, to Attorney General, 5.
- Solicitors, 57-67; appointed by President and Senate, 59; Attorney General's relations to, 19, 128; District Attorneys assisted by, 60; opinions of, 131, 135; transfer of, 190-191.
- Spanish Treaty Claims Commission, Attorney General in charge of suits before, 20.
- State Department, extradition (international) under, 49; Solicitor of, 9, 57, 67; special agents of, 217.
- Stenographic Bureau, 28-29.
- Stone, Harlem Fiske, appears in court as Attorney General, 3; quoted on duty of the Comptroller General, 165-169.
- Superintendent of Prisons, 98, 99, 199; bonds of parole presided over by, 109; jails, contracts for, made by, 84; position of, as Bureau chief, discussed, 183; prices of prison products fixed by, 101, 102; prisons and prisoners controlled by, 24; probation officers supervised by, 110. See also *Prisons; Prisoners*.
- Supplies, Division of, 28.
- Supreme Court, appeals to, in criminal cases, 50; ——— from Court of Claims, 9; ——— from Court of Customs Appeals, 20, 41, 42; Chief Justice of, presides over judicial conference, 129; clerk of, 14, 91, 92, 94; justice of, paid by Disbursing Clerk, 30; marshal for, 82, 87; Solicitor General in charge of cases before, 35; supervision of Judicial Administrative Bureau by, 179.
- Surety Companies, supervision of, by Secretary of Treasury, 65.
- Suspended land entries, board for trial of, 24, 25.
- Taxation, Division of Prohibition and, 43-44.
- Technical Divisions, 35-56.
- Territories, District Attorneys in, 81; marshals of, 88-89; jails in 89.
- Theft and Fraud Division, Bureau of Investigation, 54.
- Training School for Boys. See *National Training School for Boys*.
- Training School for Girls. See *National Training School for Girls*.
- Treasurer of the United States, as banker for prison factories, 103; agents of, detailed to Department of Justice, 51; Clerk of Court of Customs Appeals accounts to, for fees, 95; customs agents and internal revenue agents, 217.
- Treasury Department, Narcotic Division of, 209, 211, 212; Prohibi-



- tion Act cases and taxation cases arise in, 43; Prohibition Unit of; (See *Prohibition Unit*) Secret Service; (See *Secret Service*) Solicitor of; (See *Solicitor of the Treasury*).
- Trustees accounts, 32.
- Van Buren, Martin, 6.
- Vessels of United States, compromise of suits, concerning, 117.
- Veteran's Bureau, 105, 117, 128, 217.
- War Department, books for library of Department of Justice transferred by, 34; Intelligence Division of, 217; land for reformatory transferred by, 105; Solicitor of, 58.
- War Transaction Section, 17.
- Whitney, Edward B., on authority of Attorney General, 153.
- Wickersham, George W., 21, 114, 132,
- Willoughby, W. F., 157, 175, 190, 197.
- Wilson, Woodrow, 19, 155.
- Wirt, William, 3, 4; on authority of opinions of the Attorney General, 151.
- Women criminals, 192, 196.
- Women's Reformatory. See *National Industrial Institution for Women*.

